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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. AARON J. SCHOCK, Defendant.	))))))))))	Case No. 16-cr-30061

DEFENDANT AARON J. SCHOCK'S MEMORANDUM IN SUPPORT OF HIS MOTION TO DISMISS THE INDICTMENT DUE TO PREJUDICIAL MISCONDUCT BEFORE THE GRAND JURY OR, IN THE ALTERNATIVE, TO BAR THE USE OF EVIDENCE TAINTED BY THE GOVERNMENT'S CONDUCT BEFORE THE GRAND JURY

TABLE OF CONTENTS

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COMES NOW Defendant Aaron J. Schock, by and through undersigned counsel, and respectfully submits this Memorandum in Support of His Motion to Dismiss the Indictment Due to Prejudicial Misconduct before the Grand Jury or, in the Alternative, to Bar the Use of Evidence Tainted by the Misconduct before the Grand Jury.

INTRODUCTION[1]

Where a defendant establishes that government misconduct either "substantially influenced the grand jury's decision to indict," or raises "grave doubt that the decision to indict was free from [such] substantial influence," the law is clear that "dismissal of the indictment is appropriate." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988) (citation and quotations marks

[1] It is important that we note at the outset, especially because several of the undersigned counsel are former federal prosecutors, that we recognize, believe, and applaud the fact that the vast majority of Assistant U.S. Attorneys and other federal prosecutors conduct themselves honorably, performing their duties with keen attention to ethical conduct and in recognition of the need to wield the extraordinary powers they have in a most responsible fashion. Indeed, recognition of that fact makes it all the more important that when government misconduct occurs, as it did here, it be reported and addressed, and that its legacy effect on the cause of justice be vindicated.

omitted). "Based on the[] principles established by the Supreme Court," the Seventh Circuit has held that such "'prejudice' occurs when the alleged violation had a substantial effect on the grand jury's decision to indict or when it was quite doubtful that the decision to indict was free from that violation's considerable influence." *United States v. Brooks*, 125 F.3d 484, 498 (7th Cir. 1997). Here, *inter alia*, as recited in great but irrefutable detail *infra*, the government – *repeatedly and intentionally* – misled witnesses and the grand jury in presenting evidence. "What makes the government's knowing use of perjured testimony different is that it involves an element of deceit, which converts the issue from the adequacy of the indictment's evidentiary basis to fraudulent manipulation of the grand jury that subverts its independence." *United States v. Roth*, 777 F.2d 1200, 1204 (7th Cir. 1985). That same element of deceit is what permeates the presentation of evidence to the grand jury in this case.

Dismissal on account of prosecutorial conduct improperly affecting the grand jury's decision in this case is simple and straightforward: this Indictment should be dismissed because of two fundamental patterns of repeated government misconduct that prejudiced the grand jury proceedings:

1. The prosecutors made repeated false, misleading, and erroneous statements of fact and law concerning conduct by Mr. Schock to grand jury witnesses both before the grand jury and outside its presence. These erroneous statements ineluctably influenced improperly the grand jury's decision to indict and likewise had the effect of unalterably influencing the testimony of key witnesses who would be called at trial.
2. The prosecutor engaged in other misconduct that violated Mr. Schock's constitutional rights and that taints evidence used before the grand jury, giving

rise to "grave doubts" as to whether the decision to indict was unaffected by this collective misconduct.

To be clear, Mr. Schock does not ask this court to supervise the prosecutor's decisions and actions as though it were the U.S. Attorney. The gravamen of this motion is not the prosecution's misconduct, per se, but rather the effect of that conduct on witnesses and the grand jury, in derogation of the fundamental due process principle that the grand jury consider a matter with the independence required by the Constitution. For the convenience of the Court, we first summarize the relevant conduct and its adverse effects on the grand jury process, with citations to the detailed discussion of the facts which follows. We then cite the relevant law that requires dismissal of the Indictment in this case.

SUMMARY OF RELEVANT CONDUCT

In March 2015, Mr. Schock resigned following media scrutiny into the use of taxpayer and campaign funds. That same month, based on those unproven media allegations, the U.S. Attorney's Office for the Central District of Illinois ("USAO") opened an investigation into Mr. Schock. Over the next twenty months, and through the use of two federal grand juries, the USAO—led by Assistant United States Attorney Timothy Bass with assistance from Assistant United States Attorney Patrick Hansen and two dozen federal agents from the FBI, the IRS, the FDIC, the U.S. Postal Service, and the Illinois State Police—investigated Mr. Schock's personal, political, and professional life, from business activities he conducted as a teenager through his present, post-congressional employment.

There was no obvious crime apparent from the media allegations in early 2015. The media reported about Mr. Schock's business dealings (which have not been charged) and about spending by Mr. Schock's congressional office and his campaign committees. None of those reports alleged or even suggested that any crimes had been committed. As the media acknowledged, the reporting

raised questions that did not rise to the level of prima facie allegations of illegal conduct. Nevertheless, the government readily seized on and subsequently justified a grand jury investigation allegedly because of these reports. This has been an investigation of a man in search of a crime: "If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted." The Honorable Robert H. Jackson, Attorney General of the United States, *The Federal Prosecutor, An Address Delivered at the Second Annual Conference of United States Attorneys* (Apr. 1, 1940).

The Fifth Amendment requires that the grand jury exercise its independent judgment when considering whether to indict. Without reference to any motive for such conduct, what is now objectively obvious is that the grand jury's independence was compromised by the government's conduct in this case.[2]

In sum:

- The government repeatedly provided key witnesses and the grand jury with false or misleading evidence, prejudicing both, including by:
    - Misleading witnesses by directing them to select portions of financial records while ignoring exculpatory evidence contained therein, and thereafter asking the witnesses to draw an inference adverse to Mr. Schock based on erroneous conclusions unsupported by the records; *see infra*, Facts §§ I.A (pp. 15-22), II.D (pp. 43-45), and Argument §§ III.A.2 (pp. 67-72);
    - Advising a key witness that Mr. Schock *caused* his campaign to pay off an outstanding vehicle loan despite the fact that the automobile

[2] We are constrained to note that there have been repeated instances of troubling conduct outside the presence of the grand jury. We have not included details of such conduct herein in light of the Seventh Circuit's view of allegations of "outrageous" conduct, but we can provide such details if the Court desires. The government's use of a Confidential Informant, who recorded Mr. Schock and his staff without apparent regard for the Speech or Debate privilege, and who stole records belonging to Mr. Schock to give to the government, is particularly troubling. Details of that conduct will be discussed in a separate and forthcoming motion to suppress.

dealership's owner had already explained that the pay-off occurred due to a dealership mistake; *see infra*, Facts § I.B (pp. 22-27), and Argument § III.A.2 (p. 72);

- Asking this key witness at the end of the grand jury investigation, and after repeated interactions with her, if she would respond differently to a question about her view of certain of Mr. Schock's conduct in light of all the information that she had been provided by the government (which had included false facts and misstated law); *see infra*, Facts § I.D (pp. 32-33), and Argument § III.A.2 (pp. 74-76);

- Providing witnesses with information outside their personal knowledge that falsely impugned Mr. Schock's conduct and character before those witnesses and the grand jury; *see infra*, Facts § III (pp. 49-53), and Argument § III.A.2 (p. 69);

- The cumulative effect of the government's conduct was to irreversibly taint the testimony of witnesses—including most notably Karen Haney and Sarah Rogers, who are two of the key witnesses regarding most of the transactions at issue in the Indictment—with knowledge of factual matters significant to the adjudication of the Indictment by causing them to falsely infer dishonest and/or criminal conduct on Mr. Schock's part; *see infra*, Argument § III.A.2 (pp. 67-76).

- In proceedings before the grand juries, the government improperly abused and intimidated witnesses, particularly those providing exculpatory evidence regarding Mr. Schock, including by:

  - Threatening a key witness, who had provided exculpatory evidence regarding Mr. Schock, with obstruction of justice based solely on her difficulty answering the prosecutor's inartful questions; *see infra*, Facts § II.C (pp. 40-43), and Argument § III.B.1 (pp. 76-78);

  - Threatening to withdraw the immunity agreement of another key witness who had provided exculpatory evidence regarding Mr. Schock, and then took affirmative steps to conceal that it had made that threat; *see infra*, Facts § I.C (pp. 27-32), and Argument § III.B.1 (p. 78);

  - Improperly excluding from witness interviews of these two key witnesses one of their chosen counsel for the express reason that the government was concerned that the counsel might share information with the defense, leaving those witnesses with the impression that they were not to disclose what they had said in those sessions to their own lawyer; *see infra*, Facts § I.C (pp. 30-32), II.A (pp. 34-36), and Argument § III.B.2 (pp. 79-81);

  - This conduct further tainted the testimony of the same key witnesses who had been provided misleading facts and incorrect statements of the law, thus raising further doubt about their testimony before the grand jury and at trial; *see infra*, Argument § III.B.2 (pp. 79-81).

- In proceedings before the grand jury, the government repeatedly made misstatements of relevant law and/or regulatory standards to witnesses (and thus to the grand jury as well) which had the effect of alleging unlawful conduct by Mr. Schock where there was none or where the illegality of his conduct was subject to disputed interpretation of relevant standards.[3]

  - After a key witness provided an exculpatory answer regarding Mr. Schock's intent, the prosecutor provided her with an example of alleged misconduct based on an incorrect view of campaign finance law and then asked her whether "the appropriate answer" to his earlier question should be different; *see infra*, Facts § I (pp. 12-15), and Argument § III.C (pp. 82-83);

  - Implying to another key witness that Mr. Schock, his campaign committees, or even she had engaged in misconduct based on an incorrect view of whether campaign funds can purchase event tickets; *see infra*, Facts § II.E (pp. 47-49), and Argument § III.C (pp. 83-84);

  - Improperly suggesting to other witnesses that the campaign's purchase of a car for use by Mr. Schock's District Chief of Staff was illegal—conduct charged in the Indictment—despite the fact that the House Ethics Manual expressly permits Members to use campaign funds to purchase a car for official *and* campaign use; *see infra*, Facts §§ II.E (pp. 45-57), III (pp. 51-52), and Argument § III.C (pp. 83-84);

  - Implying to other witnesses that Mr. Schock engaged in wrongdoing based on similarly refutable misstatements of law; *see infra*, Facts § III (pp. 49-53), and Argument § III.C (pp. 83-84);

  - This conduct not only tainted these witnesses by falsely impugning Mr. Schock's conduct and character, it repeatedly misled the grand jury regarding the scope of campaign finance law and House rules and regulations, thus prejudicing the grand jury against Mr. Schock by causing them to view permissible conduct as illegal; *see infra*, Argument § III.C (pp. 81-84).

[3] Because the relevant legal standards governing the alleged criminal conduct by the defendant are especially material in this case to the decision to indict for crimes, based on the numerous erroneous statements to witnesses regarding such standards, we have by separate motion renewed our request for an order that directs the government to produce all colloquies with the grand jury.

- Harassed Mr. Schock before the grand jury through the invasive questioning of witnesses about Mr. Schock's sexual orientation and relationships; *see infra*, Facts § IV (pp. 53-58);

    - This conduct could potentially prejudice the grand jury against Mr. Schock; *see infra*, Argument § III.D (pp. 84-85).

- In proceedings before the grand jury, the prosecutors repeatedly and improperly referenced Mt. Schock's election not to appear to testify before the grand jury.[4]

    - The government has admitted to making comments about Mr. Schock's election not to testify before the grand jury, as is his right.

    - By publicly making false and/or misleading statements to counsel and to the Court, the government initially falsified, concealed and covered up a material fact concerning the serious matter of whether Mr. Schock's rights were respected in proceedings before the grand jury. That conduct is *prima facie* evidence of a crime (*see* 18 U.S.C. § 1001(a)).

    - Subsequently, the government disclosed that it had commented 11 times on Mr. Schock's election not to testify in the grand jury. Any commentary in a trial about such election would no doubt be immediately subject to curative instructions by a trial judge or perhaps declaration of a mistrial. It was and is uncured before these grand juries.[5]

- Each of these various categories of misconduct standing alone supports dismissal of the indictment. The cumulative impact, however, makes clear that there are grave doubts about the grand jury returning an Indictment in this case that was free of the improper influence of the government. As such, dismissal is appropriate.

[4] The details of this conduct is further detailed in our renewed motion to dismiss the Indictment for Fifth Amendment violation before the grand jury.

[5] As with the misstatements of law, because the government has refused to disclose to us the transcripts of its statements to the grand jury regarding Mr. Schock's election not to testify, we have also sought by separate motion an order that they be disclosed.

RELEVANT FACTS

Evidence of the Origin and Initiation of the Investigation Demonstrates That It Was An Investigation In Search of a Crime[6]

As FBI Agent David Harmon confirmed during his April 9, 2015 grand jury testimony (the first session of testimony in this investigation), law enforcement agencies began investigating "as media reports were emerging about former Congressman Schock's spending and questions that the media had posed."[7] He further confirmed that this investigation was "expedited very rapidly" after Mr. Schock announced his resignation.[8] Indeed, law enforcement officials had leaked details of their investigation to the media on March 20th, just three days after Mr. Schock announced his resignation, and confirmed that Mr. Schock was the government's focus. For example, CNN reported: "The FBI and the federal prosecutors in Illinois are investigating whether Rep. Aaron Schock broke the law in accounting for campaign expenses, according to people familiar with the matter."[9] The Chicago Tribune likewise reported that federal investigators had opened an investigation "into the activities of U.S. Rep. Aaron Schock that will include an examination of the Illinois congressman's expenses and campaign fund, a federal law enforcement official said Friday." That same law enforcement official, obviously trolling for allegations, made it clear that the scope of the investigation would be as broad as possible:

> "We will follow up on every allegation we pick up," said the official, who spoke on condition of anonymity. . . . Investigators are focusing on Schock's House office

[6] We have included extensive excerpts of the record within this brief itself so as not to burden the Court with having to weed through dozens of lengthy transcripts. If the Court, however, would find it useful or necessary to have the documents supporting the excerpts and citations, we will seek leave to supplement the motion with a filing containing the sources with no additional argument.

[7] Transcript of Testimony of David Harmon, Apr. 9, 2015, 3:1-4 (GJ_TRANSCRIPT_00000077).

[8] *Id.* at 16:20-23.

[9] Evan Perez and Jeff Zeleny, *First on CNN: FBI, federal prosecutors investigating Aaron Schock*, CNN.com (Mar. 20, 2015), http://www.cnn.com/2015/03/20/politics/aaron-schock-federal-investigation/ (last visited July 27, 2017).

> expense account, expenditures by his re-election campaign and his personal investments aided by longtime political donors, the official said.[10]

The practice of predicating and justifying the investigation on inchoate media speculation – the type of information typically dug up and hyped as a result of "oppo research," continued throughout the investigation. Nearly a year later in February 2016, IRS Special Agent James Peacock advised a witness that "he was working at the direction of Assistant United States Attorney Tim Bass and that they were required to investigate the allegations that were reported about Mr. Schock in the news."[11]

Congressman Schock was the Exclusive Target of a Two Year Investigation

Yet while the subject matter of the investigation was as broad as could be, its target was as narrow as possible. It was only Aaron Schock. During questioning of U.S. Postal Inspector Basil Demczak during the first grand jury session, the prosecutor received Agent Demczak's confirmation that "at least at the outset, the focus of the investigation obviously was on Mr. Schock."[12] This continued to be true no matter where the evidence led. Agent Demczak confirmed on April 9th that as a result of the initial investigation, particularly information from the government's confidential informant, five staff members were "include[d] within the investigation."[13] Yet less than one month later, the government had conferred immunity on all

[10] Richard Serrano and Katherine Skiba, *Schock said to be focus of federal inquiry; Subpoenas and grand jury are in works, sources say*, 2015 WLNR 8398936, CHICAGO TRIBUNE (Mar. 21, 2015). One is constrained to observe that in the highly charged partisan atmosphere of contemporary politics, such an invitation to peddle dirt on a political opponent in hope something will stick has to be considered irresistible.

[11] Dep't of Treasury, Memorandum of Interview of Frederick Rapp, Feb. 5, 2016, ¶ 2 (AGENT_RPT_00000618).

[12] Transcript of Testimony of Basil Demczak, Apr. 9, 2015, 7:23-25 (GJ_TRANSCRIPT_00000029).

[13] *Id.* at 8:3-16.

five of those staff members—as well as several other staffers—*without having spoken to any of them in a substantive proffer session or having heard any testimony from them*.

In addition, it appears that the prosecutor already had the Indictment's charges in sight during that initial grand jury session despite having not heard testimony from anyone other than the government's Confidential Informant (who admitted he had no information regarding the allegations reported in the media) and despite the fact the government had received only a handful of documents: "And so among the potential criminal violations that are implicated in the investigation, would they include wire fraud, mail fraud, theft of government funds, and campaign violations, all associated with using taxpayer or campaign funds for personal use?" The agent agreed.[14] The Indictment, returned more than eighteen months later, reflects each of these charges, except that the government has chosen to charge the alleged campaign finance violations under a novel (and deeply flawed) theory of anticipatory obstruction.

The prosecutor and agents have dug into every aspect of Mr. Schock's life by any means necessary. No topic has been off limits. The federal government has even delved, repeatedly, into the most intimate details of his life, *including repeated inquiries to witnesses into who he has slept with and whether he is gay*.

The Effect of the Improper Conduct

As detailed extensively herein, the prosecutor and federal agents acting at his direction or under his supervision have repeatedly engaged in conduct that by any reasonable and objective measure improperly influenced the grand jury in its decision to indict Mr. Schock, thus causing irreparable prejudice requiring dismissal of the Indictment. In addition, the government's conduct

[14] Transcript of Testimony of David Harmon, Apr. 9, 2015, 13:25 – 14:6 (GJ_TRANSCRIPT_00000077).

tainted and, in effect, destroyed critical exculpatory evidence that, at the very least, warrants suppression of the evidence the government obtained as a result of its misconduct.

Although some of this troubling conduct occurred in court or otherwise outside the jury room, much of it occurred before the grand jury's eyes and ears.

This conduct no doubt improperly influenced the grand jury, leaving as it did the indelible but false impression that Mr. Schock was a bad guy who needed to be "got." That is not hyperbole. The grand jury itself ultimately came to mirror the government's obsessive and aggressive targeting of Mr. Schock, and Mr. Schock alone. In a telling exchange during the January 19, 2016 grand jury testimony of IRS Special Agent James Peacock, a grand juror asked if the IRS's investigation was a "separate case" from the grand jury investigation, leading to this discussion:

> Grand Juror: Now, is this a totally different case than our case? I mean, you put them together, but if we can't do anything with him, can the IRS still go after him and get him?
>
> A: Yes.
>
> Grand Juror: So if – you know, like Al Capone, *if we don't get him*, then the IRS can take him down?
>
> A: Yes.[15]

I. The prosecutor systematically intimidated Karen Haney and presented her with false facts that materially influenced her grand jury testimony

Over the course of this investigation, the government has required Karen Haney—who served as Political Director of Schock for Congress and the other political committees associated with Mr. Schock—to testify before the grand jury on five separate days.[16] It requested three

[15] Redacted Transcript of Testimony of James Peacock, Jan. 19, 2016, 92:18, 93:1 (emphasis added) (GJ_TRANSCRIPT_00005285).

[16] Ms. Haney testified on May 7, 2015; May 8, 2015; July 9, 2015; July 10, 2015; and June 1, 2016. *See* GJ_TRANSCRIPT_00004789; GJ_TRANSCRIPT_00006140; GJ_TRANSCRIPT_00004145; GJ_TRANSCRIPT_00004008; GJ_TRANSCRIPT_00001971.

substantive proffer sessions and had numerous other interactions with her. The prosecutor directed one illegal search within her home of Mr. Schock's personal property that Ms. Haney was storing for him.[17] It even confronted her in the grand jury (and thus without her lawyer present) about complaints she raised regarding the government's treatment of her.[18]

The government's mistreatment of Ms. Haney began in earnest during her grand jury testimony in June of 2015. During that testimony, and as seen through the excerpts reproduced below, Mr. Bass questioned Ms. Haney regarding the process of reviewing and paying the billing statements for Mr. Schock's American Express card, which was used for multiple purposes by multiple people, including campaign and political-related purchases by one or more political committees, thus making it necessary upon receipt of a monthly invoice to assign an individual expenditure to its correct purpose. After Ms. Haney testified that the process of reviewing the bill was difficult because Mr. Schock and other involved staffers using the card were very busy, Mr. Bass responded by asking whether that difficulty meant that Mr. Schock was not doing everything he could to ensure proper use of campaign funds. Ms. Haney said that she thought he had done so, and resisted Mr. Bass's false inference, explaining that the difficulty in getting answers from busy people did not mean there was impermissible use. Mr. Bass followed Ms. Haney's responses with aggressive questioning and sought to cast doubt on her testimony due to her "loyalty" to Mr. Schock:

[17] As confirmed within the government's own report, SA Gregory J. Spencer searched sealed containers known to belong to Mr. Schock and to contain his personal property that Ms. Haney was storing in her home. *See* FBI Form FD-302 (Oct. 9, 2015) (AGENT_RPT_00000315). Although Ms. Haney agreed to permit SA Spencer into her home, the government never requested or obtained consent from Mr. Schock to search those sealed boxes.

[18] Transcript of Testimony of Karen Haney, June 1, 2016, 140-48 (GJ_TRANSCRIPT_00002110-2118); *see also*, *infra*, Facts § I.C.

> Q: Based on what you've said about difficulty and everything else, did Aaron Schock do all he could do to ensure that campaign funds were not used to pay his personal expenses?
>
> A: Yes.
>
> Q: You think he did?
>
> A: Yes.
>
> Q: How do you reconcile saying that with talking about the difficulty that you had in compiling this information?
>
> A: Well, there's a difference. Just because – and to be clear, I am no fan of the American Express bill. Okay? But just because I had difficulty obtaining information from Aaron because of his schedule or Sarah [Rogers] because of her schedule and the fact that she can't talk to me when she's on House time, right, so I have to wait until the evening or some time early in the morning, doesn't carry over to whether or not the charges came from the appropriate accounts.
>
> Q: Well, why are you – I've asked you a number of questions up to the last one –
>
> A: Yeah
>
> Q: -- where you pause and you said it was difficult or I had trouble getting – I didn't get receipts from certain people, beginning with Mr. Schock, or you struck out. But when I asked you did Mr. Schock do everything he could do to ensure that campaign funds were not used to pay personal expenses, you immediately and unequivocally say yes. Why do you unequivocally say yes to that question?
>
> A: I know there's a number of expenses that I've seen on the American Express bills that he's marked as personal that could arguably have been campaign expenses that he could have charged to the campaign that he didn't. I wouldn't be able to articulate those right now because I don't know off the top of my head, but I could go through, you know, month by month. . . [19]

Following Ms. Haney's testimony, which was exculpatory regarding Mr. Schock's intent regarding the use of campaign funds, Mr. Bass challenged Ms. Haney for several pages of testimony. As his chief example to test her view of the permissibility of Mr. Schock's expenditures, Mr. Bass asked how a payment for ski lift tickets would not be personal. Ms. Haney

[19] Transcript of Testimony of Karen Haney, July 10, 2015, 29:14–31:3 (GJ_TRANSCRIPT_00004008).

responded that it would not be personal if it was connected to a fundraiser. Even though Ms. Haney was legally correct that lift tickets purchased in connection with a fundraiser held at a ski resort are perfectly permissible,[20] Mr. Bass falsely implied that it was illegal: "unless the campaign fundraiser was on the ski lift as we were going up to the top of the mountain, wouldn't – wouldn't skiing potentially be a personal expense as opposed to a campaign expense?"[21]

When Ms. Haney equivocated in response to Mr. Bass's incorrect view of the law, he questioned the basis for her earlier answer about Mr. Schock doing everything to ensure compliance, and implied that her only basis for doing so is "loyalty":

> Q: [W]ouldn't skiing potentially be a personal expense as opposed to a campaign expense?
>
> A: I don't really know how that –

[20] *See* Final Rule: Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,864-66 (Feb. 9, 1995) (noting that entertainment expenses are permissible under FECA and that "the rules do not require an explicit solicitation of contributions or make distinctions based on who participates in the activity."). The campaign committees of Senators and Members of Congress have routinely charged expenses for fundraisers that are connected to events such as skiing, golf, sporting events, concerts and the like. As an example, in 2014, Friends of Dick Durbin spent over $10,000 on NHL tickets for fundraisers. Friends of Dick Durbin Committee, Year-End Report of Receipts and Disbursements, Itemized Disbursements (Nov. 25, 2014 and Dec. 19, 2014). The Steve Israel for Congress Committee spent $15,000 at Madison Square Garden for "Catering, Facility Rental & Fundraising Event Tickets." Steve Israel for Congress Committee, Year-End Report of Receipts and Disbursements, Itemized Disbursements (Dec. 22, 2014). Walden for Congress paid $400 to the Deer Valley Resort in Park City, Utah for event tickets. Walden for Congress, July Quarterly Report of Receipt and Disbursements, Itemized Disbursements (Apr. 5, 2013). Tim D'Annunzio for Congress spent $680 on skydiving tickets. Tim D'Annunzio for Congress, October Quarterly Report of Receipts and Disbursements, Itemized Disbursements (Sept. 15, 2012). More pertinent to the prosecutor's example, the Collins for Congress committee paid $640 for lift tickets in 2014 and the Mary Bono Mack Committee paid $1,517 for lift tickets in 2007. *See* Collins for Congress, April Quarterly Report of Receipts and Disbursements, Itemized Disbursements (Jan. 10 & 11, 2016); Mary Bono Mack Committee, April Quarterly Report of Receipts and Disbursements, Itemized Disbursements (January 11, 2007).

[21] Transcript of Testimony of Karen Haney, July 10, 2015, 34:12 – 15 (GJ_TRANSCRIPT_00004008).

> Q: So then isn't that the appropriate answer to whether Mr. Schock did everything that he could do is, as opposed to yes, I don't know?
>
> A: I'm sorry. Could you –
>
> Q: Wouldn't the appropriate answer to my question about whether or not Mr. Schock did all he could do to ensure that personal expenses were not paid for with campaign funds be I don't know rather than yes?
>
> A: But I believe that he did.
>
> Q: And so then my question to you again, why do you believe that? What information do you – are you basing that on? *Other than just what appears to be loyalty to him, why do you believe that*?
>
> A: Well, as I said, there's other expenses that arguably could have been charged to the campaign that weren't. Because I know that Aaron has never done anything for me to – for him to violate my trust with him, nor have any of the other employees. And besides that, there's also another level to where the bills go after me, which is PDS. So, ultimately, right, they're compliance. They – their job is to have full knowledge of FEC laws. And if there was something in there that they were concerned was not considered an authorized expense, then they would say something.[22]

Over the next 15-plus months, Mr. Bass and government agents interviewed Ms. Haney three more times and called her back to the grand jury. As discussed below, through these additional encounters, they informed Ms. Haney of numerous events that were outside her personal knowledge and of which she was not previously aware. Much of this information was negative regarding Mr. Schock, and more concerning, some of the information—related to conduct that is charged in the Indictment—was false or highly misleading at best.

A. The prosecutor misled Ms. Haney and the grand jury about Mr. Schock's bank statements in a faulty attempt to demonstrate intent regarding deposit of Super Bowl ticket proceeds

The government has charged Mr. Schock with wire fraud and falsifying FEC records by allegedly causing Schock Victory Committee to pay for Super Bowl tickets in 2014, while Mr.

[22] *Id.* at 34:14 - 35:18 (emphasis added).

Schock personally deposited the proceeds from selling those tickets.[23] Separately, the government has charged Mr. Schock with falsifying FEC records by allegedly causing his leadership PAC, GOP Generation Y Fund, to disclose legal fees it paid related to a dispute with a former staffer as "PAC Legal Fees."[24]

During the grand jury proceedings, the prosecutor repeatedly attempted to draw a connection between these separate transactions in order to raise an inference of intent. The government's theory was that Mr. Schock sold the 2014 Super Bowl tickets and kept the proceeds because he did not have sufficient funds in his bank account at the time to fund a pre-existing obligation: namely, his agreement to pay legal fees incurred by his former Executive Assistant Jeannie Etchart. As discussed below, the very records the government showed witnesses to demonstrate its conclusion that the funds were needed to cover the check for fees showed *precisely the opposite*. But AUSA Bass misled the grand jury and witnesses before it by misleadingly directing witnesses and the grand jury to only a portion of the entire record. As a result, he presented Ms. Haney—and several others—with evidence that falsely implied a motivation for Mr. Schock to retain the proceeds of the ticket sale, when in fact the alleged premise for so concluding was factually wrong.

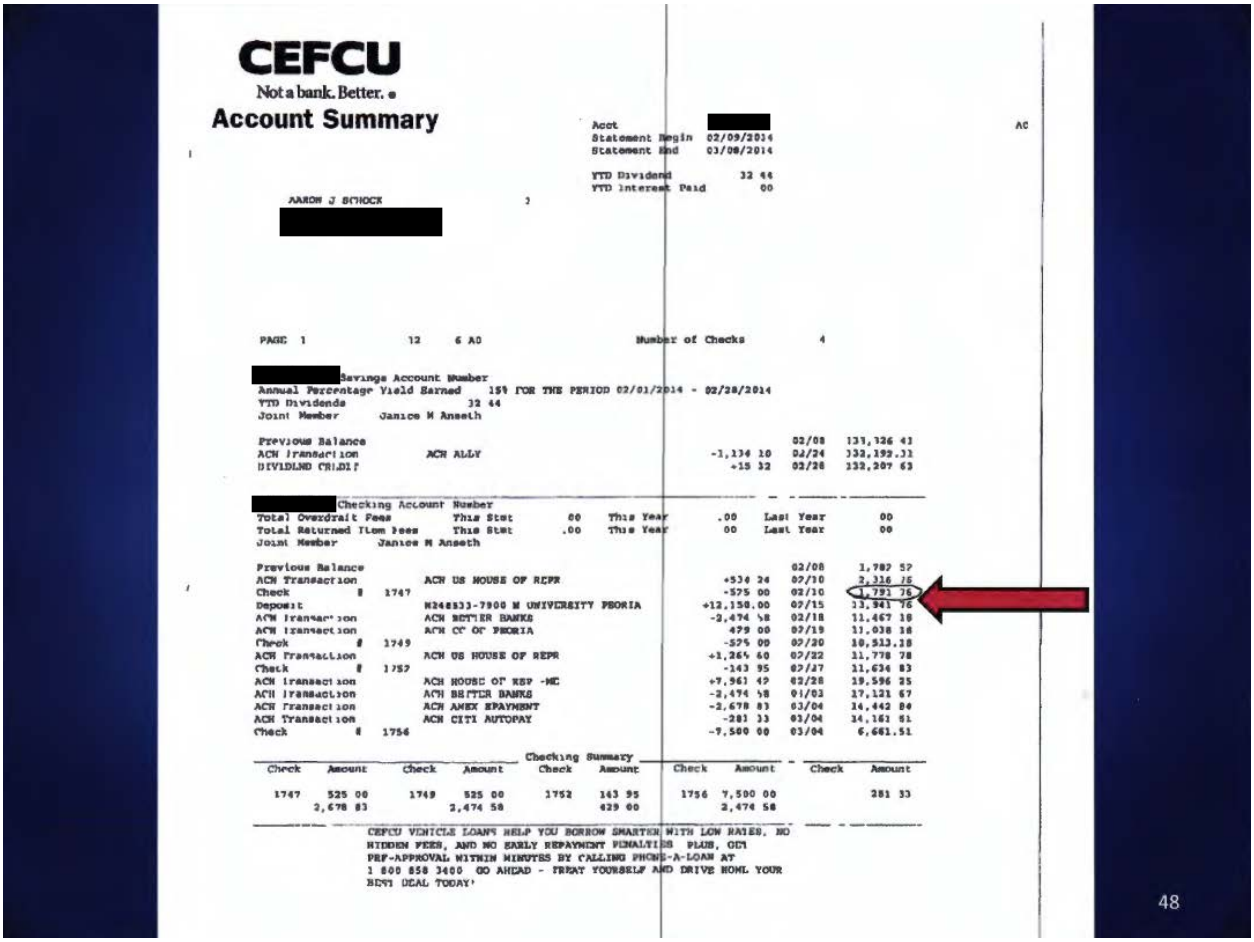
As evidence of this alleged connection, Mr. Bass repeatedly directed the grand jury and witnesses before it like Ms. Haney to only a select portion of Mr. Schock's bank statement from February and early March of 2014 in order to emphasize that Mr. Schock only had $1,791.76 in his checking account as of February 10th, and therefore *needed* to deposit the $12,500 from the

[23] *See* Indictment, Counts 7 & 14.

[24] *Id.*, Count 15.

ticket sales on February 15th, in order to have enough cash to fund his $7,500 legal fees obligation, which he paid over two weeks later on March 4th.

This included, at least in Ms. Haney's case, the government's use of an "annotated" copy of the bank statement that the government created, and that draws attention specifically to one portion of the statement:



CEFCU
Not a bank. Better.®
Account Summary

Acct [redacted] AC
Statement Begin 02/09/2014
Statement End 03/08/2014

YTD Dividend 32 44
YTD Interest Paid 00

AARON J SCHOCK
[redacted]

PAGE 1 12 6 A0 Number of Checks 4

[redacted] Savings Account Number
Annual Percentage Yield Earned 15% FOR THE PERIOD 02/01/2014 - 02/28/2014
YTD Dividends 32 44
Joint Member Janice M Anseth

Previous Balance		02/08	131,326 41
ACH Transaction ACH ALLY	-1,134 10	02/24	330,192 31
DIVIDEND CREDIT	+15 32	02/28	330,207 63

[redacted] Checking Account Number
Total Overdraft Fees This Stmt 00 This Year .00 Last Year 00
Total Returned Item Fees This Stmt .00 This Year 00 Last Year 00
Joint Member Janice M Anseth

Previous Balance		02/08	1,787 57
ACH Transaction ACH US HOUSE OF REPR	+536 24	02/10	2,323 81
Check # 1747	-525 00	02/10	1,798 81
Deposit N248833-7908 M UNIVERSITY PEORIA	+12,150 00	02/15	13,941 76
ACH Transaction ACH BETTER BANKS	-2,474 58	02/18	11,467 18
ACH Transaction ACH CC OF PEORIA	429 00	02/19	11,038 18
Check # 1749	-525 00	02/20	10,513 18
ACH Transaction ACH US HOUSE OF REPR	+1,264 60	02/22	11,778 78
Check # 1757	-143 95	02/27	11,634 83
ACH Transaction ACH HOUSE OF REP -MC	+7,961 42	02/28	19,596 25
ACH Transaction ACH BETTER BANKS	-2,474 58	01/03	17,121 67
ACH Transaction ACH AMEX EPAYMENT	-2,678 83	03/04	14,442 84
ACH Transaction ACH CITI AUTOPAY	-281 33	03/04	14,161 51
Check # 1756	-7,500 00	03/04	6,661.51

Checking Summary

Check	Amount	Check	Amount	Check	Amount	Check	Amount	Check	Amount
1747	525 00	1749	525 00	1752	143 95	1756	7,500 00		281 33
	2,678 83		2,474 58		429 00		2,474 58		

48

Ex. G to Gov. Response to Def. Schock's Mot. to Dismiss for Prosecutorial Misconduct.[25]

[25] Account numbers and address redacted for privacy per Fed. R. Crim. P. 49.1. Per the Government's previously-filed Response to Defendant Schock's Motion to Dismiss for Prosecutorial Misconduct at 30, Docket No. 127, "This annotated copy and the Bates-numbered document are the documents shown to Ms. Haney, other witnesses, and the grand jury." Notably, the government did not provide counsel with this annotated document when it produced the transcript of Ms. Haney's grand jury testimony; counsel only obtained a copy of this version when the government attached it to its Response. The government filed Exhibit G under seal in

Directing attention to only this portion of the bank statement was misleading. The same statement, *on the very same page*, confirmed that Mr. Schock had over $130,000 in his accounts at the time:

[redacted] Savings Account Number
Annual Percentage Yield Earned .15% FOR THE PERIOD 02/01/2014 - 02/28/2014
YTD Dividends 32.44
Joint Member Janice M Anseth

Previous Balance			02/08	131,326.41
ACH Transaction	ACH ALLY	-1,134.10	02/24	132,192.31
DIVIDEND CREDIT		+15.32	02/28	132,207.63

Excerpt of CEFCU_3_00000023; GJ_TRANSCRIPT_00002183[26]

Tellingly, the government did *not* circle the savings account balance of $132,207.63. It did not place a large red arrow next to it. And there is no evidence that the government ever directed Ms. Haney to it or mentioned it to her in any way—in a grand jury session or otherwise.[27]

At the time of Ms. Haney's testimony, the government also possessed documents demonstrating that Mr. Schock's savings account routinely covered payments that exceeded the balance of his checking account. Even a cursory review of Mr. Schock's bank statements demonstrates that his savings account (which had $132,207.63 at the end of February) routinely

connection with the above-referenced filing due to its obligations under Fed. R. Crim. P. 6(e); the government has represented that it does not object to our use of the document in connection with the instant motion.

[26] Account number redacted for privacy. This excerpt comes from the Bates-labeled document that the government represents it showed to Ms. Haney, other witnesses, and the grand jury. *See* Response to Defendant Schock's Motion to Dismiss for Prosecutorial Misconduct at 29-30, Docket No. 127 (referencing document CEFCU_3_00000023).

[27] For example, although counsel for Mr. Schock complained to the USAO in June 2016 regarding Mr. Bass's misleading use of the bank statement, the report of the government's subsequent interview with Ms. Haney in November 2016 does not indicate that the government advised Ms. Haney about the savings account balance or the possibility of overdraft coverage. *See* Mem. of Interview of Karen Haney, Nov. 2, 2016 (AGENT_RPT_00001006) at 5. Indeed, the report reflects that the government continued to discuss the $7500 payment for legal fees *immediately* after discussing the purchase of the 2014 Super Bowl tickets (and just *before* discussing the purchase of tickets to the 2015 Super Bowl), thus strongly suggesting the government continued to connect the campaign's payment for the tickets to Mr. Schock's payment of legal fees—despite the lack of evidence of any intent to connect the two. *Id.*

and automatically covered overdrafts in his checking account, including three times the very next month,[28] and a total of at least *twenty-eight times* in bank statements the government has obtained from multiple sources.[29]

The prosecutor and government agents nevertheless presented Ms. Haney with this misleading information in a proffer session and then again before the grand jury. During an April 2016 proffer session with Karen Haney, the prosecutor and/or his agents presented this false connection between Mr. Schock's sale of Super Bowl tickets to his payment of Jeannie Etchart's legal fees to Ms. Haney and confirmed that she was "unaware" of it. The report states:

> HANEY was unaware that SCHOCK deposited the $12,000.00 in proceeds from the sale of the tickets to the broker into his personal account and *then used $7,500.00 of the deposited proceeds to pay JOHN ETCHART for legal fees*.[30]

Fewer than two months later, in front of the grand jury (and the current lead prosecutor on the case who sat in on Ms. Haney's testimony), Mr. Bass again falsely connected the deposit of the 2014 Super Bowl ticket proceeds and the payment of legal fees by directing her to the misleading portion of Mr. Schock's bank statement.[31] He did this through a pain-staking 21 pages of testimony, wherein he repeatedly established that: (1) Ms. Haney had no knowledge of the sale of the tickets or any use of the proceeds, (2) she had no knowledge of the underlying dispute related

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[28] *See* AS_PROD_00000207 (bank statement for March 2014 reflecting overdraft coverage on March 18, 19, and 20).

[29] *See, e.g.*, AS_PROD_00000108 (one instance); AS_PROD_00000112 (one instance); AS_PROD_00000114 (one instance); AS_PROD_00000134 (one instance); AS_PROD_00000142 (two instances); AS_PROD_00000153 (two instances); AS_PROD_00000168 (nine instances); AS_PROD_00000207 (three instances); AS_PROD_00000214 (one instance); AS_PROD_00000216 (three instances); AS_PROD_00000222 (one instance); and AS_PROD_00000257 (three instances).

[30] FBI Form FD-302 Revised Memorandum of Interview of Karen Haney, Apr. 21, 2016 (AGENT_RPT_0000155) (emphasis added).

[31] *See* Transcript of Testimony of Karen Haney, June 1, 2016, 41-61 (GJ_TRANSCRIPT_00001971).

to the legal fees, (3) he knew that she did not know these things, and (4) he had told her these things during prior interviews.

Mr. Bass began the inquiry by discussing Mr. Schock's purchase and sale of sporting event tickets. At the outset, he specifically observed that he had spoken with Ms. Haney about these topics during prior proffer sessions and that he knew she was unaware of the details: "And would this have been one of the areas where you were – *became aware of information that you had not previously been aware of?*"[32] He then twice confirmed that she also *did not know* that Mr. Schock sold tickets or that he deposited the proceeds into his bank account.[33]

Mr. Bass pivoted to ask questions related to the legal fees. After Ms. Haney confirmed that she did *not* know anything about the underlying dispute related to those fees, Mr. Bass then presented Ms. Haney with the "annotated" copy of Mr. Schock's bank statement excerpted above and containing the black circle and red arrow:

> Q: So in the – shortly after the sale – the deposit of the – do you see the balance in the CEFCU account just before the deposit of the sale of the Super Bowl tickets? 1791.76 I believe is the total. Do you see that?
>
> A: *I'll trust what you say*. I feel like I need to get glasses because I cannot even read that but – okay.
>
> Q: Is that better?
>
> A: You're looking at the bottom number?
>
> Q: I'm looking at the red circle – the black circled number.
>
> A: Oh.[34]

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[32] *Id.* at 41:17 – 42:1 (emphasis added); *see id.* at 46:11-17 (reconfirming "so there's no misunderstanding" that Ms. Haney was "unaware of . . . how the tickets were purchased or who purchased them").

[33] *See id.* at 46:22-47:13. A page later, he confirmed this yet again: "[P]rior to us asking you about these matters, you were previously unaware of them; is that right? A: That's right." *Id.* at 48:8-11.

[34] *Id.* at 52:7-19 (emphasis added).

Ms. Haney's response suggests that the prosecutor was presenting the bank statement on some kind of projector. She even had to "trust" what he was telling her because she could not read the document until he either zoomed in or did something to make it "better" so that she could read it. It is also patent from the record that Mr. Bass directed Ms. Haney (and thus, the grand jury) specifically to the number that had been circled in black (and which had the large red arrow next to it). Mr. Bass next directed her to the deposit shown on that bank statement:

> Q: On 2/10 the balance in the account was 1791.76. Do you see that?
>
> A: Yes, I see that.
>
> Q: And then when the deposit of the Super Bowl ticket proceeds is made on February 15th, the balance is now 13,941.76?
>
> A: Yes.[35]

After Mr. Bass "assume[d]" Ms. Haney was "also unaware" of Ms. Etchart's hiring of counsel, and that Ms. Haney was "unaware of this whole matter," Mr. Bass linked the tickets and legal fees:

> Q: And at the time then that Mr. Schock wrote that check, *again this is the balance*, he would not have had enough money *in his bank account* to cover that $7500 check. Do you see that?
>
> A: Yes.
>
> Q: But when he deposited the sale of the Super Bowl tickets proceeds, now he has enough funds in the account to cover the $7500 check. Do you see that?
>
> A: Yes.[36]

AUSA Bass's statement that Mr. Schock "would not have had enough money in his bank account to cover that $7500 check"[37] was false. Mr. Schock's "bank account" was a joint checking and savings account that contained over $130,000.

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[35] *Id.* at 52:20-54:1.

[36] *Id.* at 54:25-55:9 (emphasis added).

[37] *Id.*

After showing this to Ms. Haney, Mr. Bass referred to their earlier proffer session and said, "this is where there were certain times during the interview *where you kind of had a realization of things that you had not previously been aware of*."[38] Finally, Mr. Bass then repeated "the whole chronology" in a 28-line narrative statement, yet again connecting the sale of tickets to the payment of legal fees, stating: "He then sells the tickets for a profit, deposits the proceeds of those tickets in his account, which then allows him to cover the $7500 check to Mr. Etchart, which he then comes to you and says now can you reimburse me out of the Gen Y account that $7500."[39]

There is no indication meanwhile that the government ever advised Ms. Haney that Mr. Schock had over $130,000 in his account or that overdraft protection would have covered the check for legal fees—even after we raised concerns regarding the government's misleading use of the bank statement.[40]

B. The prosecutor falsely told Ms. Haney that Mr. Schock had "caused" Schock for Congress to pay off his vehicle loan balance despite the government's knowledge that the car dealership had already explained it was their mistake

Within the Indictment's description of Mr. Schock's so-called scheme to defraud, the government accuses Mr. Schock of *causing* Schock for Congress to incur a loss in an automobile transaction wherein Mr. Schock sold his personally-owned 2010 Chevrolet Tahoe, and the

[38] *Id.* at 58:6-9 (emphasis added); *see also* FBI Form 302, Revised Memorandum of Interview of Karen Haney at 1, April 21, 2016, AGENT_RPT_0000155 ("HANEY was unaware that SCHOCK deposited the $12,000.00 in proceeds from the sale of the tickets to the broker into his personal account and then used $7,500.00 of the deposited proceeds to pay JOHN ETCHART for legal fees.").

[39] Transcript of Testimony of Karen Haney, June 1, 2016 at 59:20-60:22 (GJ_Transcript_00001971).

[40] The government noted the savings account and overdraft protection through Agent testimony before the second grand jury. The government's presentation, however, was still misleading, as detailed *infra* at Facts § I.A. And as noted, there has been no indication that the government informed Ms. Haney of these additional facts.

campaign purchased a 2015 Chevrolet Tahoe.[41] Although the Indictment is short on details, the loss referred to resulted from how an existing loan balance on the 2010 Tahoe was paid off during the transaction.

During the grand jury investigation, the government implied to witnesses like Ms. Haney that Mr. Schock directed this payoff to occur this way. This was false. As explained below, while making these representations, the government—including the prosecutor—possessed evidence from Jeff Green, the car dealership's owner, explaining that the dealership had made a mistake that resulted in the payoff being funded from the campaign.

Because Mr. Schock had traded in a personally-owned vehicle in connection with the campaign's purchase of the new vehicle, the value of the trade-in was due him, less payment for any outstanding lien on the trade-in. During a May 26, 2015 proffer session, Mr. Green alerted the government that a mistake had been made in this transaction. The government's memorandum reports: "Green was asked why Schock's personal loan of $5,621.99 was also paid off in addition to receiving the $26,000 check, considering his 2010 Tahoe was only worth a total of $26,000. Green stated 'looks like we screwed up big time.'"[42]

A few weeks later, on June 17, 2015, through counsel, Mr. Green further explained what happened via a letter to one of the government agents and with a copy to the prosecutor. The agent had requested documents related to this transaction as well as "any information Jeff [Green] would have on who at the dealership discussed the payment of $26,000 to Aaron Schock and the pay-off of the loan."[43] Counsel responded that documents had already been provided and continued:

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[41] *See* Indictment ¶ 57.

[42] FDIC, Memorandum of Interview of Jeffrey Green, May 26, 2015, at 2 (AGENT_RPT_00000581).

[43] Letter from Lee Smith, Esq: to Bernie Coleman, cc: Tim Bass at 2 (June 17, 2015) (AGENT_EML_00000388 at -0390).

> The other people involved in the transaction were David Angevine, who is still employed at Green Chevrolet, and Michael Hammer, who is not. *Further review of the documents make it apparent that a mistake had been made in the transaction in that the payoff amount of $5,621.99 should have been subtracted rather than added to the payoff.*[44]

The government failed to interview Mr. Angevine or others at the dealership for over a year.[45] In the interim, however, between the government's receipt of the letter from Mr. Green alerting it to the dealer's mistake and its follow-up interviews with the dealership employees who had been identified as knowing about the mistake, the prosecutor had nevertheless presented to Ms. Haney, as a fact, that Mr. Schock had *caused* the campaign to pay off the loan.

The prosecutor and agents first discussed this issue with Ms. Haney during an April 21, 2016 proffer session. The report confirms that Ms. Haney "was unaware" of this information: "HANEY advised that she was unaware that some of the funds from the campaign check written to purchase the 2015 Tahoe were used to pay off a loan balance of SCHOCK."[46]

The prosecutor then questioned Ms. Haney about the transaction during her June 2016 grand jury testimony. There, in the presence of the current lead prosecutor on this matter, Mr. Bass directly attributed the payoff to Mr. Schock:

> Q: Did you know that as part of – not at the time, obviously, since you weren't involved, but later did you know that as a result of that transaction Mr. Schock

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[44] *Id.* (emphasis added).

[45] Although the government interviewed Mr. Green again in September 2015, the report of that interview does not reflect any discussion of that transaction (although as noted in Mr. Green's testimony below, he has testified that he had mentioned this mistake "[e]very time we've met," thus exculpatory information was omitted from the September 2015 report of interview), *see* Transcript of Testimony of Jeff Green, June 22, 2016, 44:5-13 (GJ_TRANSCRIPT_00001131); FDIC, Memorandum of Interview of Jeff Green, Sept. 10, 2015 (AGENT_RPT_00001029)). The government finally interviewed Green Chevrolet employee David Angevine and General Manager Anthony Ficociello in June of 2016 (the last month the grand jury was sitting). And the prosecutor finally asked Mr. Green to explain the transaction to the grand jury in the middle of June 2016, just days before the government initially intended to indict Mr. Schock.

[46] FBI Form FD-302, Revised Memorandum of Interview of Karen Haney, Apr. 21, 2016, at 2 (AGENT_RPT_00000155 at -0156).

> *caused* Schock for Congress not only to buy the new Tahoe but also to pay off the balance of $5600 on his old Tahoe?
>
> A: No. It was my understanding the campaign paid for the car. I didn't know anything else was tacked onto it.[47]

Mr. Bass later reconfirmed with Ms. Haney that she did not know about this: "Again, I'm assuming that you were aware of none of this."[48]

Later that same month, *after* advising Ms. Haney, a key witness, that Mr. Schock had *caused* the payoff to occur in a way that implicated Mr. Schock, the government finally followed-up with Mr. Green and spoke for the first time with the dealership employees involved in this transaction. Each confirmed the dealership made the mistake. General Manager Anthony Ficociello told government investigators:

> The $26,000 that was paid to SCHOCK should have been reduced by the amount of the payoff to Ally Financial. The amounts were handled as two payoffs. Angevine thought SCHOCK had two payoffs. *Obviously the dealership did not ask the right questions.*[49]

When the prosecutor asked Finance Manager Dave Angevine before the grand jury why he kept "talking about what could have, should have, or might have" happened, Mr. Angevine responded: "Part of it is I feel bad because I know I added the payoff."[50]

Mr. Bass finally questioned Mr. Green extensively about the transaction before the grand jury on June 22, 2016, some three weeks *after* he had told Ms. Haney that Mr. Schock had caused

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[47] Transcript of Testimony of Karen Haney, June 1, 2016, 100:25–101:8 (emphasis added) (GJ_TRANSCRIPT_00001971).

[48] *Id.* at 102:8-9.

[49] Dep't of Treasury, Memorandum of Interview of Anthony Ficoccello at ¶ 7, June 14, 2016 (emphasis added) (AGENT_RPT_00000714).

[50] Transcript of Testimony of David Angevine 38:15-21, June 21, 2016 (GJ_TRANSCRIPT_00001518).

the campaign to pay off the loan. Mr. Green explained how the mistake occurred, reminding the prosecutor that he had explained this to the government on several prior occasions:

> Q: Now, you referenced the fact that there was a mistake, and you say now that you think that this 5,621.90 – 5,621.99, the payoff, should have been deducted from the 26,000 to Mr. Schock?
>
> A: No. On this piece of paper that you've got here in Dave Angevine's writing, they should have subtracted 26,000 from – well, 5,621 from the 26- to come up with that number instead of adding to it. So that's where the opposite – this is David Angevine, who was yesterday, his writing.
>
> Q: So that's what – that's what you're saying now, and you've mentioned this—
>
> A: Every time we've met, yes.
>
> Q: -- that the amount of money that – the amount of the check that was written to Mr. Schock should have been $5,621.99 less. That's what you're saying; right?
>
> A: Correct.[51]

Thus, in June 2016, the government finally confirmed what Mr. Green had indicated in May 2015 and his counsel had stated in June 2015: the payoff was a mistake.

Despite all of this, *the government persists in charging Mr. Schock with causing this transaction*. Returning full circle to Karen Haney, the prosecutor and the government again raised this transaction—that she was not involved in—during a November 2016 proffer session. There is no indication that the government advised her that Mr. Green or the dealership employees had confirmed it was a dealership mistake. Instead, the report reflects that the government's newfound theory is that Mr. Schock never told anyone it had been a mistake:

> Haney said she did not know that Schock had a balance on the old Tahoe and she did not know Schock received a $26,000 check from the $73,000 that was paid by the campaign. Haney also did not know that there was a payoff made on the loan

[51] Transcript of Testimony of Jeffrey Green, June 22, 2016, 44:1-18 (GJ_TRANSCRIPT_00001131).

> for the old Tahoe. *Haney was never told it was a mistake for paying off the loan. Schock never advised Haney of a mistake and he never reimbursed the campaign*.[52]

There is no indication that Mr. Bass presented Ms. Haney with any evidence indicating that Mr. Schock had ever realized that a mistake had been made and then knowingly failed to correct it.

The government's newfound theory that Mr. Schock must have realized it was a mistake is unsupported as well, as Mr. Green had explained during his grand jury testimony both how and *when* the mistake was discovered, explaining that *after* government agents had first questioned him regarding the transaction (*i.e.*, long after Mr. Schock had resigned and the investigation had commenced), Mr. Green and his employees reviewed the transaction and found the mistake: "So we're going through the numbers, and that's when I spotted that this 5,621 should have been subtracted and not added. And then everybody just – we were, like, 'Oh, my gosh.' So that's when I told your guys."[53]

C. The government has taken numerous actions that have had the effect of intimidating Ms. Haney, which steps, combined with the other misconduct in regard to her as a witness, improperly influenced her testimony

Between Ms. Haney's initial grand jury appearances in 2015 and her final proffer session in November 2016, the government had numerous interactions with Ms. Haney under contentious circumstances. For example:

- Ms. Haney, as she confirmed to the grand jury and as discussed further below, believed that she was not permitted to tell her lawyer, Mr. Coffield, about matters discussed during proffer sessions that he did not participate in (which was at the government's direction);

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[52] U.S. Postal Inspector Memorandum of Interview of Karen Haney, Nov. 2, 2016 (emphasis added) (AGENT_RPT_00001006 at -1009).

[53] Transcript of Testimony of Jeffrey Green, June 22, 2016, 46:14-18 (GJ_TRANSCRIPT_00001131); *see id.* at 46:19-24 (confirming this was after the government requested that Mr. Green produce records).

- The government threatened Ms. Haney with prosecution in connection with her grand jury testimony when she gave truthful testimony not to the prosecutor's liking;[54]

- Government agents executed a search warrant on Schock for Congress in Peoria, during which Ms. Haney was directed to come to the campaign office to provide access to the office and storage units, on a day the prosecutor knew her attorney was otherwise engaged in Springfield representing another witness in connection with grand jury proceedings in this matter;

- An FBI agent appeared at her house unannounced one morning saying he was directed by the prosecutor to search boxes belonging to Mr. Schock without receiving prior permission from Ms. Haney's counsel (and never receiving any consent from Mr. Schock or his counsel for the search of sealed boxes)[55]; and

- Subjected her repeatedly to proffer sessions covering the same topics.

Tellingly, and as detailed just below, the government omitted references in a government report to its threat to charge Ms. Haney. And it later created, *after* we had complained to the Department of Justice about USAO interference with defense access to witnesses, a revised version of a report of a subsequent interview with Ms. Haney that affirmatively conceals that this threat was made.

Ms. Haney's first proffer session was on November 19, 2015. This was after she had already testified before the grand jury on four different days. The prosecutor finally permitted a proffer session based upon an agreement that her attorney, Mr. Coffield, could not be present, but that her other attorney and Mr. Coffield's local counsel, Mr. Beckett, could be. Mr. Coffield had objected to this arrangement but reluctantly agreed to it to help his client avoid more of the type of abuse she had suffered in prolonged grand jury appearances. At the outset of that interview, Ms. Haney recalls that Mr. Bass gave an approximately five-minute long speech, stating in part

[54] *See* Decl. of Karen Haney, Ex. A, ¶¶ 2, 4.

[55] *See* FBI Form FD-302 (Oct. 9, 2015) (AGENT_RPT_00000315) (confirming, in the government's own report, that an FBI agent opened sealed containers known to belong to Mr. Schock that Ms. Haney had in her basement).

that there were strong concerns from him and the grand jury about her and her candor and warning her that the grand jury had raised the possibility of removing her immunity.[56]

Further compounding this misconduct, the government failed to record its threat. Although this threat constituted *Giglio* information, in that it could be used to impeach Ms. Haney at trial, the government's report of the interview states only: "Prior to the interview, Assistant United States Attorney, Timothy Bass, instructed Haney to be 100% truthful with her answers and that anything Haney provides could not be used against her pursuant to the proffer agreement Haney previously entered into."[57] This conveys but a fraction of the five-minute speech that Mr. Bass gave, and it omits entirely the threat to revoke her immunity.

Worse still, it appears the government later took steps to add a statement to an existing interview report to state the opposite: that Ms. Haney had never been threatened. After the November 2015 proffer session, Ms. Haney's next proffer was on April 21, 2016. The government has produced *two* versions of a memorandum reporting on that interview. The first, which was drafted the day after the interview by the FBI's lead agent on the case, does not contain any discussion about whether or not anyone had ever threatened Ms. Haney's immunity (or about an email that her counsel, Mr. Coffield, had sent to Mr. Schock's counsel stating that he feared the prosecutor would look unfavorably upon any of his clients meeting with Mr. Schock's counsel).[58]

The government drafted a *revised* version on July 22, 2016, which was some three months after the interview and after we had raised concerns with the Department of Justice regarding

[56] *See* Decl. of Karen Haney, Ex. A, ¶ 2.

[57] Dep't of Treasury, Memorandum of Interview of Karen Haney, Nov. 19, 2015 at 1 (AGENT_RPT_00000773).

[58] FBI Form FD-302, Interview of Karen Haney, Apr. 21, 2016 (drafted Apr. 22, 2016) (AGENT_RPT_00000157).

various issues of misconduct, including the treatment of Ms. Haney. This new version is identical to the first except for the inclusion of the following paragraph:

> AUSA BASS began the interview discussing a March 1, 2016 email from WILLIAM COFFIELD to GEORGE TERWILLIGER with the permission of BECKETT. BECKETT was provided with a copy of the email prior to the interview and was permitted to consult privately with HANEY about it before the interview began. With the permission of BECKETT, AUSA BASS let HANEY read the email and HANEY advised that she had no knowledge about the email and that the email did not speak on her behalf. *HANEY further advised that she has not been threatened by anyone nor has anyone threatened to revoke her agreement with the Government*. HANEY also understands that she is free to speak to AARON SCHOCK'S attorneys if they request an interview and it is her decision. AUSA BASS also received permission from BECKETT to question HANEY about the email in the Grand Jury.[59]

The representation that Ms. Haney "further advised that she has not been threatened by anyone nor has anyone threatened to revoke her agreement with the Government" is false. As confirmed by Ms. Haney's attached affidavit, *see* Ex. A, Mr. Bass had made this very threat.

As for the representation that Ms. Haney "also understands that she is free to speak to AARON SCHOCK'S attorneys if they request an interview and it is her decision," that is questionable at best, and in any event was the result of defense complaints about the government's hindering of witness communications. Ms. Haney confirmed in her final grand jury appearance on June 1, 2016, which was after the April interview in question, that she did not believe she could even speak to *her own lawyer* (Coffield) about the proffer sessions.

Indeed, a review of the record makes it clear that the government went to great lengths to prevent Mr. Schock, through his lawyers, from obtaining information that would be useful to his defense. At the conclusion of Ms. Haney's June 1, 2016 testimony, Mr. Bass turned the questioning over primarily to the current lead prosecutor in the case (First Assistant United States

[59] FBI Form FD-302, Revised, Memorandum of Interview of Karen Haney, Apr. 21, 2016 (drafted July 22, 2016) (AGENT_RPT_00000155).

Attorney Patrick Hansen), who interrogated Ms. Haney about how she had been treated and whether she understood that she was free to talk to anyone she chooses. Ms. Haney ultimately demanded to have her attorney, Mr. Coffield, present for conversation on that subject matter, but she first confirmed repeatedly that she was under the impression that she could not talk to Mr. Coffield (her *own* attorney) about what was discussed during proffer sessions:

> Q (by Mr. Hansen): Has anybody asked you not to cooperate with the government?
>
> A: No.
>
> Q: Has anybody from the government asked you not to cooperate with anyone else? It's that hesitation that makes me ask the question.
>
> A: I – yes, I feel like that.[60]

Upon further questioning, Ms. Haney explained that while no one had specifically asked her not to cooperate, she had believed that she was not permitted to talk to Mr. Coffield about certain things: "But I will say I certainly was under the impression that I was not to talk to my own attorney about what was taking place in proffer sessions."[61] Under still further questioning, she reiterated that same point several more times.[62] During this questioning, a grand juror even chimed in to try to explain the government's motivation: "they didn't want your lawyer – the other lawyer to be in the session, not that you couldn't talk to him, but *he didn't want the lawyer hearing everything*."[63]

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[60] Transcript of Testimony of Karen Haney, June 1, 2016, 140:16-22 (GJ_TRANSCRIPT_00001971).

[61] *Id.* at 143:4-7.

[62] *See id.* at 143:17-18 (confirming one of her attorneys [Mr. Coffield] "wasn't allowed to be in my proffer sessions"); *id.* at 144:16-18 ("But then I also was told that I wasn't to discuss anything from the proffer with Mr. Coffield, who is co-counsel with Mr. Beckett."); *id.* at 145:18-20 ("I was definitely under the impression I couldn't tell him [Mr. Coffield] what took place in the proffer.").

[63] *Id.* at 145:12-17 (emphasis added).

Mr. Hansen and Mr. Bass persisted in questioning Ms. Haney regarding how the government had treated her despite her obvious discomfort. Right after Mr. Hansen started questioning her about these topics, Ms. Haney asked to step out to talk to her attorney.[64] Two pages later, she again informed Mr. Hansen that she felt like she needed to consult her attorney.[65] She left to confer again.[66] One page after that, Ms. Haney stated that she "would feel more comfortable talking about this with [her] attorney—"[67] Mr. Hansen kept saying that was "okay," but he also kept asking questions. Mr. Bass shortly interjected to explain "the circumstances under which the proffers were held."[68] Finally, after several more pages of continued questioning on this topic, Ms. Haney insisted that she "just [did not] know if it's the appropriate venue" to discuss "any other issues or questions she wanted to raise."[69] After Mr. Hansen asked if they could talk outside the grand jury room, Ms. Haney replied, "That's fine. I mean, I just really would prefer my attorney be present, if that's allowable."[70] Mr. Hansen finally agreed to discuss the matter further outside.

D. Perfecting the influence on the witness's testimony: after intimidating and providing Ms. Haney with false, negative information about Mr. Schock, the government sought to establish that her opinion of Mr. Schock had changed

Ms. Haney was the final witness the government interviewed before presenting the Indictment to the charging grand jury. Even though the government by now had interviewed her three times and she had appeared before the grand jury five times, the prosecutor and the agents

[64] *See id.* at 139:18-21.
[65] *Id.* at 141:4-6 ("I feel like I need to talk …. talk to my attorney.").
[66] *Id.* at 141:16-17.
[67] *Id.* at 142:23-24.
[68] *Id.* at 143:19-22.
[69] *Id.* at 147:15-23.
[70] *Id.* at 148:3-5.

discussed nearly all of the conduct that would be charged against Mr. Schock with Ms. Haney, including conduct related to congressional MRA expenditures she was not a part of. At the conclusion of the interview—the last one the government conducted before seeking the Indictment—Mr. Bass reminded Ms. Haney of a question that she had answered in an earlier grand jury appearance, but this time, he finally received a different answer:

> Bass reminded Haney that in the first Grand Jury when asked the question if she thought Schock had done all he could to document mileage, she replied yes. Bass then asked Haney if she would respond the same way now, *knowing all the information she has been given and the misapplication by Schock.* Haney replied that after seeing it all, she would not answer those questions the same way.[71]

Mr. Bass had in fact succeeded in changing Ms. Haney's opinion about Mr. Schock's conduct. But this was premised on false information, abusive questioning, and harassment.

II. The prosecutor threatened Sarah Rogers, provided her with false facts, and misled her on the law

Throughout the grand jury investigation, the prosecutor subjected Sarah Rogers, who was Mr. Schock's third Executive Assistant, to much the same treatment as Ms. Haney. This included requiring Ms. Rogers to testify on four days before the grand jury and to participate in three proffer sessions and follow-up questioning. The prosecutor's treatment of Ms. Rogers within the grand jury—particularly her early appearances—was contentious if not outright abusive.

More troubling still, the prosecutor presented Ms. Rogers with false information regarding events outside her personal knowledge. The chronology mirrors that of Ms. Haney's treatment discussed above. Faced with a key witness whose testimony was objectively favorable to Mr. Schock on relevant issues, Mr. Bass responded by repeatedly subjecting Ms. Rogers to additional

[71] U.S. Postal Inspector, Memorandum of Interview of Karen Haney, Nov. 2, 2016 (emphasis added) (AGENT_RPT_00001006).

inquiries (often on the same topics discussed again and again) and to false information that would have the predictable effect of influencing Ms. Roger's view of Mr. Schock and thus her testimony.

A. The government subjected Ms. Rogers to hostile grand jury appearances instead of proffer sessions because the prosecutor did not want her attorney to participate

Just like with Ms. Haney, Mr. Bass denied Ms. Rogers the chance to proffer before her initial grand jury appearances because the prosecutor did not want her attorney, William Coffield, to learn and communicate information to the defense. On June 3, 2016, which was exactly one year after Ms. Rogers first appeared in the grand jury, Mr. Bass explained his reasoning:

> Q: But you understood at that time that the government was unwilling – because of the concerns that the government laid out in the motion relating to Mr. Coffield's and Mr. Beckett's fees being paid by Mr. Schock and the fact that Mr. Coffield was communicating with Mr. Schock's counsel and possibly sharing information that you provided not only with Mr. Schock's counsel but might be required to share information that you provided in a proffer with his other clients? Do you remember those were some of the concerns that we addressed in the motion that we filed?
>
> A: Yes
>
> Q: Okay. And that was the reason why we were – do you understand that that was the reason why we were unable to conduct any meetings outside the grand jury at that time?
>
> A: I did not understand that at the time, but I do now.[72]

Notably, the prosecutor later permitted Mr. Beckett to participate in proffer sessions,[73] so Mr. Bass's voiced concern about Mr. Schock's (actually Schock for Congress's) payment of staffer legal fees was apparently not a principled basis for refusing the proffers. Thus, Mr. Bass's only

[72] Transcript of Testimony of Sarah Rogers, June 3, 2016, 5:16-6:9 (GJ_TRANSCRIPT_00008973).

[73] *See, e.g.*, FBI Form FD-302, Interview of Sarah Rogers, June 27, 2016 (AGENT_RPT_00000269) (reporting on a proffer session with Ms. Rogers conducted "in the presence of her attorney, STEVEN BECKETT").

reason for depriving Ms. Rogers of the chance to have one of her lawyers participate was the possibility that he might share information with the defense.

Due to the lack of an initial proffer session, and without a lawyer in the grand jury room, Ms. Rogers' initial grand jury sessions were trying experiences for her. As an agent memorandum for a much later proffer session reports: "ROGERS did advise that she did feel uncomfortable with the grand jury process in the beginning because the process is intimidating."[74] Similarly, when Mr. Bass later questioned Ms. Rogers in front of the grand jury about her treatment, she "strongly" agreed that her earlier grand jury appearances were uncomfortable.[75] She explained that she was in a "much better place" after finally being afforded a proffer session opportunity.[76] During this discussion, Mr. Bass explained again that the government had finally agreed to this less-confrontational option "provided that Mr. Beckett would be the attorney that would represent you during these meetings and that he would not be sharing any information with Mr. Coffield or with any other clients."[77]

Mr. Bass later returned to the subject of Ms. Rogers' treatment at the end of her grand jury testimony and asked if the government had ever threatened her in any way:

> Q: Has anyone ever – from the government ever threatened you in any way?
>
> A: I think there was a lot of confusion in the beginning of this process because none of us have been through this before and you're told to not talk about it and there's a stigma around the case. It was very clear in the beginning that you did not care for Mr. Coffield or that became clear through my first couple jury chances. But with – but after the proffer things – proffer sessions, things are much more clear now. So, no. Now I know I can meet with Aaron's attorneys. *Then I thought it was not okay for me to meet with Aaron's attorneys.* Not because of anything

[74] FBI Form FD-302, Interview of Sarah E. Rogers, May 3, 2016 at 1 (AGENT_RPT_00000168).
[75] Transcript of Testimony of Sarah Rogers, June 3, 2016, 7:7-12 (GJ_TRANSCRIPT_00008973).
[76] *Id.* at 7:18-19.
[77] *Id.* at 6:10-17.

> specific that you had said but just because I was told – or, I thought that we couldn't talk about anything that happened.[78]

Ms. Rogers therefore had initially had the distinct impression that she could not meet with and talk to Mr. Schock's counsel.

B. Ms. Rogers provided exculpatory evidence regarding Mr. Schock, which was met by the prosecutor's dismissiveness

Ms. Rogers' initial grand jury sessions were not just uncomfortable; they were abusive. During those sessions, on multiple topics central to the Indictment, she provided significant exculpatory evidence as to Mr. Schock's actions and intent. Mr. Bass met such testimony with confrontation and accusations of bias, evasiveness, and even threats of false statements and obstruction of justice.

For example, during Ms. Rogers' first grand jury appearance, she provided exculpatory evidence regarding Mr. Schock's receipt of private automobile mileage reimbursements. During her testimony, she repeatedly explained to the grand jury that she submitted vouchers to the House Finance Office for reimbursement to Mr. Schock based on a monthly amount, which she adjusted up or down based on his time spent in district, and which she understood was based on a historical average that had been figured out by her predecessors.[79] She also testified she had no basis to doubt the historical average's accuracy because Mr. Schock worked constantly and drove all over

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[78] *Id.* at 73:13 – 74:4 (emphasis added).

[79] *See, e.g.*, Transcript of Testimony of Sarah Rogers, June 3, 2015, 37:13 -38:14 (GJ_TRANSCRIPT_00004472) ("Mileage was figured out to be around 1200 a month. It depended on how much he was in the district."); *id.* at 42:22 – 43:13 ("And so it was my understanding that that had been figured out that that was an average of what he did. That's the way Pamela [Mattox] did it. That's the way Jeanne [Etchart] did it. Jeanne passed that on to me."); *id.* at 37:18-20 (explaining that she would adjust the amount based on Mr. Schock's time in district); *id.* at 54:14-17 ("Q: And did you or specifically did Mr. Schock ever do anything to confirm whether or not that number was accurate? A: No. I thought that had been done.").

his district. In response to the prosecutor asking her how she knew "that he drove a single mile," she explained:

> I also knew that he kept a very busy schedule, so – I would talk to him quite frequently on the weekends. He would be going from – [a grand juror left the room] – one farm bureau picnic to another speech to another – I mean, he – I don't think I ever talked to him when he had a down day. So I never second-guessed that he was driving.[80]

In addition to repeatedly expressing skepticism or dismissal of her testimony, Mr. Bass used the occasion to misleadingly inform Ms. Rogers that in addition to her submission of a voucher for MRA mileage reimbursement for Mr. Schock in September of 2014, Schock for Congress had, in August, reimbursed Mr. Schock $9,433, which equated to approximately 16,844.6 miles. This was misleading because Mr. Bass implied that the Schock for Congress payment was for one month of driving, stating that with the September MRA payment, "[t]hat's a total of almost 20,000 miles that he was paid for in less than two months alone."[81] Ms. Rogers did not know about that payment. But what Mr. Bass failed to tell her was that Schock for Congress had not reimbursed Mr. Schock for campaign-related mileage since December 13, 2010, a span of nearly four years, which included the entire 2012 reelection cycle and part of the 2014 one.[82]

Having provided this misleading and incomplete information about the campaign mileage, Mr. Bass pressed Ms. Rogers again regarding whether Mr. Schock took money for personal use. She continued to resist such a characterization, but it is clear the misleading Schock for Congress example was on her mind:

> Q: So, Ms. Rogers, how is that not Mr. Schock taking money for personal use?
>
> A: I don't really know how to answer that question.

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[80] *Id.* at 50:18-12; 51:3-12

[81] *Id.* at 58:18-59:4.

[82] *See* Schock for Congress FEC Form 3, Year End 2010, at 18.

> Q: Well, he's getting tax –
>
> A: I can't speak to the Schock for Congress payment at all.
>
> Q: If he didn't verify – didn't provide you with one piece of paper verifying the amount of mileage he actually drove but yet you continued to process these as you understood it was to be done, without any information from him, without any verification from him, how is that not—
>
> A: It was my understanding that this average of miles that he was driven – I mean, he was from – the man wakes up at 5:00 in the morning ready to go and works until, when he's in D.C., 11 or 11:30 at night, nearly every single day, all day. So from – that average had been done. I was told to continue that average. That's all I knew. That's all I had – I had responsibility over the MRA. That's – I mean, I never second-guessed that he wasn't driving and doing stuff all of the time.
>
> Q: What do you think now? What do you think now?
>
> A: I don't know the context of that Schock for Congress payment, so I can't –
>
> Q: Well, have you –
>
> A: -- speak to that.[83]

Ms. Rogers did not know the context of the Schock for Congress payment because Mr. Bass did not provide it to her. In response to further questioning, Ms. Rogers acknowledged that during the media frenzy about Mr. Schock, she did have questions about the mileage, but she reaffirmed her belief in its accuracy: "But was there – I still never doubt that he drove an excessive amount of miles doing official things every month. Do I wish that I would have kept to and from or that I would have asked him to? Maybe."[84] Mr. Bass's response to this was to question Ms. Rogers' bias: "Well, let me just ask you then – it sounds like you think very highly of Mr. Schock."[85]

As another example, during a discussion about Mr. Schock's government credit card the following day, Ms. Rogers explained that occasionally mistakes were made regarding what

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[83] Transcript of Testimony of Sarah Rogers, June 3, 2015 at 59:18-60:21 (GJ_TRANSCRIPT_00004472).

[84] *Id.* at 61:14-18.

[85] *Id.* at 61:24-25.

expenses were purchased on the card, but that she and Mr. Schock corrected those mistakes. Mr. Bass responded by challenging the basis for her statements, but Ms. Rogers provided explanations:

> Q: And did Mr. Schock ever use the government card for personal expenses?
>
> A: Yes, sir.
>
> Q: What kind of personal expenses did he use the government card for?
>
> A: They were typically like a mistake when he put like a meal on the wrong card. And we would – I would have Karen [Haney] get a personal check from him and mail it to AmEx or I would have him get a personal check and mail it to AmEx. Or if it should have been a campaign, I would have Karen – tell her the charge and she would determine which committee – which account it came from and send a check to Citibank.
>
> Q: Why do you refer to it as a mistake?
>
> A: If you shouldn't have put that on one card.
>
> Q: So was Mr. Schock using his government credit card for personal and campaign purposes based on --
>
> A: Not intentionally that I know of.
>
> Q: Why do you say that? How do you know what he intentionally did?
>
> A: Well, typically if it was a mistake and I said, hey, I think this is – should have been paid for otherwise, he would easily write a check.
>
> Q: To who?
>
> A: The Citibank.
>
> Q: How many times did this happen?
>
> A: I don't know. Not – not terribly many that I remember. More early on.[86]

This exchange recalls the one discussed above between Mr. Bass and Karen Haney regarding whether Mr. Schock did everything he could to ensure that campaign funds were not used for personal use. In both instances, Mr. Bass challenged the basis for the witness's exculpatory

[86] Transcript of Testimony of Sarah Rogers, June 4, 2015, 117:11 – 118:16 (GJ_TRANSCRIPT_00004305).

statements as to Mr. Schock, and in both instances, the staffers gave specific responses demonstrating personal observations of Mr. Schock's actions.

And just like with Ms. Haney, Ms. Rogers' favorable testimony was met by confrontation, threats, and the presentation of false information about Mr. Schock.

C. The prosecutor threatened Ms. Rogers with obstruction of justice because of her confusion about his questions

Mr. Bass not only questioned Ms. Rogers sharply and aggressively, he threatened her by raising the specter of false statement and obstruction of justice accusations based solely on her difficulty answering his inartful questions. For example, in Ms. Rogers' appearance on June 4, 2015, Mr. Bass quickly leapt to accusations of evasiveness and obstruction during questioning about redecoration of Mr. Schock's office, a project that spanned several months:

> Q: And did you have any conversations with Mr. Schock about that?
>
> A: Yes.
>
> Q: And what were those – what did those involve? What did he tell you about it?
>
> A: I don't recall all of them. It was a long process.
>
> Q: Do you recall any conversation you had with Mr. Schock about the redecoration of his office?
>
> A: Yes.
>
> Q: Tell us about your conversation with him.
>
> A: There were multiple.
>
> Q: We can sit here until 5:00 and I can ask you question after question. I can ask you to come back and I'm going to ask you to come back. But if there is a question that you don't understand, please tell me. I'm just trying to ask you simple questions about what conversations you had with Aaron Schock.
>
> Now, the question again is: Did you have a conversation with Aaron Schock about the decoration of his office?
>
> A: Yes.

Q: What was said during that conversation or those conversations, if there was more than one?

A: There was a lot said. Can you be more specific?

Q: No. I asked you a question. What was your conversations? What did you say to him and what did he say to you?

A: Can I have a break?

Mr. Bass: Sure.[87]

When Ms. Rogers returned, Mr. Bass resumed questioning, but first warned Ms. Rogers:

Q: Please have a seat, Ms. Rogers.

Ms. Rogers, the grand jury has asked me to remind you that [you] are under oath.

A: Yes, sir.

Q: Do you understand that?

A: I do.

Q: I asked – I advised you yesterday that it was part of your rights and responsibilities that if you were to fail to provide truthful testimony you could be charged with the crimes of making a false statement or declaration. Do you remember that?

A: Yes, sir.

Q: *In addition, if you are intentionally evasive in answering any questions, meaning you intentionally try to avoid or withhold information, you could also be charged with the crime of obstruction of justice*. Do you understand that?

A: Yes, sir.

Q: *And that also carries a penalty of up to imprisonment or a fine or both*. Do you understand that?

A: Yes, sir.

Q: Now let me ask the question again. Did you have conversation – a conversation or conversations with Mr. Schock about the redecoration of his office?

[87] Transcript of Testimony of Sarah Rogers, June 4, 2015, 31:23 – 33:6 (GJ_TRANSCRIPT_00004305).

> A: Yes, sir.
>
> Q: And could you describe what those – that conversation or those conversations – what occurred and what was said?
>
> A: Yes, sir. The confusion in that question is that this is a very lengthy and complicated process for all members of Congress. So there were a multitude of conversations along the way.[88]

After further discussing the office redecoration, Mr. Bass again "reminded" Ms. Rogers about obstruction of justice after she responded to a question by saying that she could not recall:

> Q: Do you remember being asked by anyone about how the decoration of the office was paid for?
>
> A: I'm sure I was asked. It was a – got lots of attention. But it wasn't donated. So I don't know that that would have been my – I don't know. I don't know.
>
> Q: Do you recall whether or not you were ever asked about how – by anyone about how the decoration of the office was paid for and what was your response?
>
> A: I don't recall.
>
> Q: *I want to remind you again about what obstruction of justice is*.
>
> A: Yes, sir. I –
>
> A: I'm asking you about something that happened less than five months ago.
>
> A: Yes, sir. I was asked about the office a lot. It was in the newspaper. I have quite – I mean, I have friends in D.C. It was the talk of the town for quite a bit. I was asked a lot about the office. I don't recall an answer of saying it was ever donated. I do know that it was a constituent of his that had decorated other offices, including his previous one. She gave him advice as a friend. But he paid for the objects and stuff that were in there. I – that's my understanding.[89]

Later in the same testimony, after Ms. Rogers advised Mr. Bass that she could not recall the cost of Super Bowl tickets she had purchased for Mr. Schock, he told her he "want[ed] to give [her] every opportunity to tell the truth," that he would give her "one more opportunity" to answer the

[88] *Id.* at 33:9 - 34:19 (emphasis added).

[89] *Id.* at 47:18 – 48:20 (emphasis added).

question, and that she had "one last chance to answer this question."[90] Again, this treatment was in response to Ms. Rogers explaining that she was having trouble recalling specific details – in this case, about something that had happened well over a year earlier: "Yes, sir. And I'm really trying to tell you the truth, but this is a lot to remember. I've purchased quite a few things. There are a lot of numbers and there are a lot of names. I'm doing my best to remember."[91]

At no point during these exchanges did Ms. Rogers refuse to answer a question or irresponsibly try to evade a truthful answer. Rather, as the examples demonstrate, the problem was Mr. Bass's questioning. Ms. Rogers was clearly trying to answer his questions, yet he jumped straight to accusations of obstruction of justice. In short, Mr. Bass bullied Ms. Rogers. He also provided her false information, as discussed next.

D. The prosecutor presented Ms. Rogers with false facts that impugned Mr. Schock

Like with Ms. Haney, Mr. Bass presented Ms. Rogers with the false connection between the Super Bowl ticket proceeds and payment of Ms. Etchart's legal fees by directing her to the selective portion of Mr. Schock's bank statement:

> Q: This is a copy of Mr. Schock's personal bank account statement. Do you see the deposit of 12,150 on February 15th?
>
> A: I do.
>
> Q: Do you see that? And do you see the balance in the account just prior to that on February 10th? It's 1791.76.
>
> A: I do.
>
> Q: Which would be less than $7500. Do you see that?
>
> ….

[90] *Id.* at 129:13 – 103:12.

[91] *Id.* at 130:13-17.

> Q: But Mr. Schock never told you that he had sold these tickets that you had bought on his behalf?
>
> A: No, he did not.
>
> Q: And deposited the proceeds into – *and at the time he deposited the proceeds he didn't have the money in the account to cover that $7500 check that he later wrote to Mr. Etchart*. Do you see that check cleared on March 4th?
>
> A: I do.
>
> Q: None of this was information that Mr. Schock advised you of at any time; was it?
>
> A: No.[92]

But by the date of Ms. Rogers' testimony, she had already confirmed in a prior grand jury session she did not know Mr. Schock had sold the Super Bowl tickets. In fact, during that earlier exchange, the prosecutor, without any predicate, informed Ms. Rogers that Mr. Schock had deposited the proceeds of the ticket sale "*and had his campaign account pay* the American Express charge that you incurred."[93] Ms. Rogers was not aware of that.[94] Mr. Bass's statement to Ms. Rogers about something outside of her personal knowledge thus directly, and falsely, represented to a key witness that Mr. Schock *caused* the campaign's payment of the ticket cost – a legal conclusion for which Mr. Bass lacked evidence.

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[92] Transcript of Testimony of Sarah Rogers, June 3, 2016, 29:12-30:19 (GJ_TRANSCRIPT_00008973) (emphasis added); although the transcript does not indicate the Bates number of the exhibit being discussed, the government attached the same CEFCU_3_00000023 version of the bank statement to this grand jury transcript during discovery that it asserts it used during the grand jury testimony of Ms. Haney. *See id.* at GJ_TRANSCRIPT_00009081.

[93] Transcript of Testimony of Sarah Rogers, June 4, 2015, 138:10-16 (GJ_TRANSCRIPT_00004305).

[94] *Id.* at 138:17.

Ms. Rogers also twice confirmed her lack of knowledge about the sale of the tickets during interviews, including with the prosecutor.[95] Notably, the agent's descriptions of the questions and answers on this topic are *identical* in the agent reports for the two interviews, which were conducted more than five months apart, except the addition of one sentence.[96]

Because the prosecutor already knew that Ms. Rogers was unaware of the sale of the Super Bowl tickets, then *a fortiori* he knew by her final June 2016 appearance she would not know how the proceeds of such a sale were used. Thus, he presented her with information that she did not know and that implied Mr. Schock had engaged in wrongdoing. Yet this information – presented in connection with her testimony before the grand jury – was affirmatively contradicted by documentary evidence. The bank statement used by Mr. Bass proved on its face that Mr. Schock had sufficient funds. There is no indication that Mr. Bass ever explained to Ms. Rogers that he had been mistaken, that Mr. Schock had not needed the money to pay the legal fees, or that his savings account provided overdraft protection.

E. The prosecutor misled Ms. Rogers regarding campaign finance laws in a manner that cast doubt on permissible conduct

Mr. Bass not only presented false or misleading factual information to Ms. Rogers, he misled her regarding the law, including related to conduct charged in the Indictment. The government has charged Mr. Schock with causing Schock for Congress to falsify an FEC record in violation of 18 U.S.C. § 1519 by reporting the purchase of a Ford Fusion for use by District

[95] FBI Form FD-302, Interview of Sarah E. Rogers, Nov. 24, 2015 at 3 (AGENT_RPT_00000328); FBI Form FD-302, Interview of Sarah E. Rogers, May 5, 2016 at 2 (AGENT_RPT_00000168 at -0169).

[96] *Compare* FBI Form FD-302, Interview of Sarah Rogers, Nov. 24, 2015 (AGENT_RPT_00000328), *with* FBI Form FD-302, Interview of Sarah Rogers, May 5, 2016 (AGENT_RPT_00000168).

Chief of Staff Dayne LaHood as a "transportation expense."[97] This purchase, however, was permissible and accurately disclosed. A Member of Congress may use campaign funds to purchase a vehicle that will be used for official travel. The House Ethics Manual expressly states as much:

> **Expenses of a Motor Vehicle That Is Used for Official House Travel.** It is permissible for a Member to lease or purchase a motor vehicle with campaign funds and to use that vehicle on an unlimited basis for travel for *both* campaign *and* official House purposes. Campaign funds may also be used to pay the expenses incurred in operating the vehicle, such as insurance, maintenance and repair, registration fees, and any property tax.[98]

The Manual further provides that Members may use campaign funds to defray "official or officially-related travel," including that of staff or even of job applicants, interns, or event guests.[99] The Rules of the House of Representatives likewise condone Members using campaign funds to defray official expenses.[100]

Although this was a campaign expenditure related to a District Office staff member, Mr. Bass nonetheless asked Ms. Rogers, a D.C. office staffer, questions about it. In so doing, he implied that an official staff member's use of a campaign-purchased vehicle was impermissible:

> Q: Can you think of any reason why it would be appropriate for a House staff member like yourself or Mr. LaHood to be provided with a campaign car?
>
> A: I didn't have a campaign car.
>
> Q: Can you think of any reason why it would be appropriate for another staff member such as yourself to be provided with a campaign car?
>
> A: I don't know.[101]

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[97] *See* Indictment, Count 17.

[98] House Ethics Manual at 174.

[99] *See id.* at 176.

[100] House Rule XXIV, cl. 1(b)(1) ("a Member . . . may defray official expenses with funds of a principal campaign committee of such individual under the Federal Election Campaign Act of 1971").

[101] Transcript of Testimony of Sarah Rogers, June 4, 2015, 99:22 – 100:5 (GJ_TRANSCRIPT_00004305).

Through such phrasing, the prosecutor left the distinct impression that Mr. LaHood's use of a campaign-purchased vehicle was impermissible, when in fact it was not.

Shortly thereafter, Mr. Bass continued to press an incorrect view of FEC personal use law by implying that Schock for Congress's payment of concert tickets to reward staff members and office interns for their work was illegal. Ms. Rogers, however, did not acquiesce, and responded from experience that such use would be permissible:

> Q: Did you pay for your ticket to the Katy Perry concert?
>
> A: No, sir.
>
> Q: So that would be a personal expense, right?
>
> A: The congressman took – most members of Congress at the end of the month take all their interns out for dinner and the conversation was – Aaron brought me into the office the day before and said, 'Instead of taking the interns out to dinner, I want to take them to the Katy Perry concert and ice cream. Can you see if there are any tickets available?'
>
> Q: And that would have been a personal expense of Mr. Schock and you and the other staff members; right?
>
> A: I'd been taken to dinner previously for like end-of-the-year stuff with previous bosses and paid for by the campaign as well. So I don't know.[102]

Yet Mr. Bass continued to press Ms. Rogers on whether the campaign's payment for Katy Perry tickets for the interns was personal use. She explained that she believed that while use of *government* money would have been inappropriate, she believed it was appropriate to use *campaign* funds and that she believed it "happens very often for them to be paid for by campaign funds." When asked why she thinks that, she noted for example that a recent news article had reported "that 19 members are hosting events at the Taylor Swift concert that's coming up in D.C." Demonstrating his continued legally-flawed and overly-constrained views about proper uses of

[102] *Id.* at 123:14 – 124:12.

campaign funds, Mr. Bass replied: a "concert is not a campaign event. There's no campaigning. There's no speaking by the member. It's a concert, right?"[103]

But the relevant campaign finance provisions are far more expansive than that in making allowance for campaign expenditures. In adopting its regulations governing the permissible use of campaign funds, the FEC explicitly rejected an approach that would require it to "draw conclusions as to which relationship [personal or campaign related] is more direct or significant."[104] The FEC has been "reluctant to make these kinds of subjective determinations," and therefore adopted a rule in order to "reduce piecemeal resolution of personal use issues and . . . provide more prospective guidance to the regulated community."[105] Thus, the FEC rejected an approach that would require an "explicit solicitation of contributions" or that guests be present for an entertainment expense to be permitted under FECA.[106] Instead, the FEC stated that "the rules do not require an explicit solicitation of contributions or make distinctions based on who participates in the activity."[107] The FEC declined to adopt a more restrictive rule along the lines of the government's apparent view of campaign finance law, because it would constitute "a significant intrusion into how candidates and officeholders conduct campaign business."[108]

Thus, Ms. Rogers was correct and the prosecutor was wrong. Nevertheless, his persistence in questioning Ms. Rogers based on his flawed view of campaign finance law very well could have

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[103] *See id.* 125:4 – 126:24.

[104] Final Rule: Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,864 (Feb. 9, 1995).

[105] *Id.*

[106] *Id.* at 7,866.

[107] *Id.*

[108] *Id.* Indeed, campaign committees routinely expend funds or hold fundraisers connected to concerts or sporting events. *See supra* note 20.

created the false impression to her and the grand jury that Mr. Schock, the campaign, or even she had broken the law.

F. The prosecutor concluded his dealings with Ms. Rogers by planting a seed that she would be blamed for conduct at issue here

After three substantive proffer sessions, other interactions, and four days of testimony before the grand jury, including all of the intimidation, false information, and misleading statements of law discussed above, Mr. Bass chose to conclude his questioning of Ms. Rogers by sowing a seed that Mr. Schock or his counsel would blame her for the conduct at issue in this case:

> Q: And if that were to be the claim – if Mr. Schock or his attorneys were to say that these were clerical errors, staff mistakes, Sarah Rogers' errors, would that be true?
>
> A: No.[109]

Thus, just as Mr. Bass had done with Ms. Haney, he attempted to bring Ms. Rogers to question Mr. Schock and his actions despite, or perhaps on account of, her earlier testimony that was objectively exculpatory as to Mr. Schock's alleged offense conduct.

III. The prosecutor similarly misled other witnesses or provided witnesses with negative information about Mr. Schock outside of their knowledge

Karen Haney and Sarah Rogers are two of the key witnesses in this matter, and the government has spent more time with them than nearly anyone else. The misconduct outlined above is thus particularly troubling given their centrality to the case.

But the government influenced other witnesses by the same misconduct as well, further demonstrating that misconduct has permeated this investigation. For example, Mr. Bass provided false information to Rachel Honegger, who was one of Mr. Schock's first campaign staffers. He did so by yet again presenting the false connection between the sale of Super Bowl tickets and the

[109] Transcript of Testimony of Sarah Rogers, June 3, 2016, 79:19-23 (GJ_TRANSCRIPT_00008973).

payment of legal fees. As Mr. Bass knew, Ms. Honegger had no role with Schock for Congress in 2013 or 2014, so there was no basis for assuming that she knew anything about the sale of Super Bowl tickets, let alone a connection between it and the payment of legal fees. After establishing her lack of any knowledge of these matters, Mr. Bass nevertheless went further, directly and falsely connecting the ticket sale to the legal fees:

> Q: Did he mention anything about that that caused Ms. Etchart to hire an attorney and incur legal fees?
>
> A: I don't remember the details of that part of it.
>
> Q: Or did he mention anything to you that he had agreed to reimburse Ms. Etchart's father for the legal fees that he had paid –
>
> A: No.
>
> Q: - - to Ms. Etchart's attorney?
>
> A: I know nothing about that.
>
> Q: *Or that he sold Super Bowl tickets to cover the check*?
>
> A: No. Nothing about that.[110]

As explained above, however, Mr. Schock's bank statement contradicts this assertion. Mr. Bass yet again had presented this false information to a witness. And on this occasion, he did not bother to show a copy of Mr. Schock's bank statement at all; he instead presented it as a fact that Mr. Schock "sold Super Bowl tickets to cover the check."

Mr. Bass also misled both Darren and Rebecca Frye, two close friends of Mr. Schock's, about the facts and the law. When questioning them about Mr. Schock's occasional use of their condominium in Chicago, the prosecutor misleadingly informed both of them that there is an absolute prohibition on members of Congress receiving gifts, implying that such use constituted

[110] Transcript of Testimony of Rachel Honegger, June 22, 2016 at 41:20 - 42:9 (emphasis added) (GJ_TRANSCRIPT_00001072).

an improper gift.[111] He declined to inform either that the House Ethics Manual expressly permits Members to accept a gift of personal hospitality from an individual, including lodging, even if the lodging is a second home: "It is not required that the host be present; thus, use of a personally owned vacation home is permissible even if the owner is not present."[112]

Mr. Bass also repeatedly presented Ms. Frye with examples of Mr. Schock's alleged spending that were outside her personal knowledge and presented, as an established fact, that Mr. Schock had "used $2,200 worth of campaign funds to buy stereo equipment that was installed in [his] garage,"[113] despite the fact that he presented her no evidence that Mr. Schock knew that campaign funds had been used for such a purpose, let alone that he directed it or intended for it to happen. Instead, he presented the erroneous legal conclusion that Mr. Schock had broken the law.

Meanwhile, just as he had with Ms. Rogers, Mr. Bass misled Schock for Congress Treasurer Paul Kilgore regarding the campaign's purchase of a vehicle for use by District Chief of Staff Dayne LaHood. Mr. Bass did so by making the legally erroneous statement that campaign funds and official expenses can never overlap, without mentioning the House Ethics Manual's express permission for the use of campaign funds to purchase a vehicle for unlimited travel for both campaign and official purposes;[114] that campaign funds may defray "official or officially-

[111] *See* Transcript of Testimony of Darren Frye, June 23, 2016, 19-27 (GJ_TRANSCRIPT_00009125); Transcript of Testimony of Rebecca Frye, June 23, 2016, 40-41, 45-46 (GJ_TRANSCRIPT_00009233).

[112] House Ethics Manual at 62.

[113] Transcript of Testimony of Rebecca Frye, June 23, 2016, 68:7-9 (GJ_TRANSCRIPT_00009233).

[114] House Ethics Manual at 174.

related travel";[115] or that the Rules of the House of Representatives likewise condone use of campaign funds to defray official expenses.[116]

Mr. Bass also falsely implied to Mr. Kilgore that Mr. Schock impermissibly used the 2015 Tahoe purchased by Schock for Congress after he resigned, despite the government's knowledge that the campaign had sold the vehicle. Mr. Bass stated that campaign funds cannot be converted to personal use and then established that Mr. Kilgore was unaware "that after Mr. Schock resigned from Congress that he continued to drive that Tahoe that was purchased with Schock for Congress funds." He then asked if Mr. Kilgore could "think of any legitimate reason why a resigned Congress member would drive a campaign-paid-for vehicle."[117] Mr. Kilgore said it could be legitimate if he was "driving to his attorney's office for campaign-related stuff, for example."[118]

This questioning falsely implied that Mr. Schock was continuing to drive a campaign vehicle post-resignation. In fact, and as the government already knew, Schock for Congress promptly sold the Tahoe back to Green Chevrolet on April 6, 2015, just days after Mr. Schock's resignation. A week *before* Mr. Bass questioned Mr. Kilgore, several government agents had interviewed Mr. Green, wherein he confirmed that Green Chevrolet had repurchased the Tahoe, but that Mr. Green was allowing Mr. Schock, as a friend, to continue driving the vehicle:

> Green explained that on April 6, 2015 his dealership repurchased the 2015 Tahoe for $46,000 from Schock for Congress. However, Schock continued to personally use the vehicle until May 22, 2015 . . . . Green explained that he did not charge

[115] *Id.* at 176.

[116] House Rule XXIV, cl. 1(b)(1) ("a Member . . . may defray official expenses with funds of a principal campaign committee of such individual under the Federal Election Campaign Act of 1971").

[117] Transcript of Testimony of Paul Kilgore, June 5, 2015, 106:8-17 (GJ_TRANSCRIPT_00006606).

[118] *Id.* at 106:16-17.

> Schock anything for using these vehicles because he just wanted to help friend [sic] who is going through hard times.[119]

Indeed, the following day, the FBI followed-up with Mr. Green to photograph the Tahoe's odometer—thus obviously knowing it was in his possession.[120] Accordingly, either Mr. Bass knew that the campaign had resold the vehicle, in which case he knowingly misled Mr. Kilgore, or he had not bothered to check with his own investigatory team before telling a witness that Mr. Schock had done something illegal when he indisputably had not.

IV. The government asked numerous witnesses about Mr. Schock's sexual orientation and romantic relationships

The government has investigated nearly every facet of Mr. Schock's professional, political, and personal life. This even includes his sex life. It is no secret that there has long been speculative gossip in the media about Mr. Schock's sexual orientation. For no apparent reason, the government felt itself compelled to investigate this too. Indeed, from the very inception of this investigation, the government discussed with witnesses whether Mr. Schock is gay, whether he really "dated" his ex-girlfriend (a highly-accomplished diplomat and attorney), and whether he spent the night or shared hotel rooms with her.

The government's apparent obsession with Mr. Schock's sexuality and whether or not he "dated" Karla Gonzalez was fueled from the very first conversation with the government's confidential informant: "C/S [Confidential Source] did not know for sure Schock's relationship

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[119] FDIC Memorandum of Interview of Jeffrey Green, May 26, 2015 at 3 (AGENT_RPT_00000581).

[120] *See* FBI Form FD-302, May 27, 2015 (AGENT_RPT_00000227) (reporting that FBI Special Agent Spencer met Jeff Green "to take a photo of a 2015 Chevrolet Tahoe's mileage").

status, but heard gossip that 'something was going on' with Shea Ledford. . . . C/S believed Schock's ex-girlfriend Karla Gonzalez was not a 'real girlfriend,' and was a 'beard.'"[121]

Indeed, the government asked *twelve additional witnesses* questions on these topics. We have detailed below where the grand jury transcripts or government reports of interviews make clear that these topics were discussed with ten of those witnesses. But troublingly, it appears based on our own investigation that government reports for two other witnesses omit information regarding these types of inquiries.

Turning to the record, Shea Ledford's grand jury testimony reflects that the prosecutor questioned him for six and a half pages regarding Mr. Schock's relationship with Ms. Gonzalez. After the prosecutor asked what Mr. Schock had said about his relationship with Ms. Gonzalez, Mr. Ledford responded: "They were hanging out. I mean, I'm sure we had many conversations where she was brought up, I'm sure. I know he told me when he started hanging out with her. I don't know at what point they were dating, if they were dating, when they weren't. I know it was kind of on again, off again."[122] Mr. Bass then mined the minutia of whether or not they were really "dating," leading to his apparent incredulity that Mr. Ledford distinguished between "going on dates" and "dating":

> Q: Were they dating?
>
> A: I don't know if they were – I know they would go on dates. I don't know if they were dating boyfriend-girlfriend. I know that it was a – what are those – what do the kids nowadays say? It was complicated.
>
> Q: I don't – I'm just asking you if they were dating. And you said they went out on dates, but you don't know if they were dating. *Now explain that to me. How do you go out on dates and not be dating? I'm just asking you a simple question if you*

[121] Illinois State Police, Interview of USPIS Confidential Source #900001831, Mar. 18, 2015 at 2 (AGENT_RPT_00000791).

[122] Transcript of Testimony of Shea Ledford, Apr. 27, 2016, 58:13-19 (GJ_TRANSCRIPT_00002259).

> *had conversations with Aaron Schock and Karla Gonzalez and were they – did he tell you they were dating?* It's a simple question. Did you have communications with him about that?[123]

Mr. Bass further inquired if Ms. Gonzalez also had a boyfriend,[124] and asked if Mr. Schock and Ms. Gonzalez "stayed in the same hotel room" on a trip to Jamaica.[125] Indeed, so important was the question of whether Mr. Schock and Ms. Gonzalez had stayed in the same hotel room in Jamaica to Mr. Bass that he *asked it again* in the afternoon session of Mr. Ledford's grand jury testimony: "And did Mr. Schock and Ms. Gonzalez share the same room?"[126]

The government asked three other witnesses about who stayed in hotel rooms:

- Adam Vitale: "SCHOCK and Gonzalez were considered a couple and stayed in the same room."[127]
- Keith Siilats: "Everyone had his own room, except for maybe LaHood and his wife who probably shared a room."[128] Indeed, the report of Mr. Siilats' interview also states: "Siilats believed Schock was being scandalized because reporters think he's gay."[129]
- Dayne LaHood: "LAHOOD also remembered a June 24, 2013 weekend get together in Chicago with his wife, SCHOCK, KARLA GONZALES and SAM and JULIE HOERR . . . . LAHOOD believes that SCHOCK, GONZALES and the HOERR'S may have stayed at the Peninsula Hotel."[130]

The government asked Tania Hoerr, who is Mr. Schock's sister and who later testified before the grand jury, questions about her brother's relationship with Ms. Gonzalez: "HOERR

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[123] *Id.* at 58:25 – 59:14 (emphasis added).

[124] *Id.* at 61:1-7.

[125] *Id.* at 62:25 – 63:3.

[126] *Id.* at 111:13-14.

[127] Dep't of Treasury, Memorandum of Interview of Adam Vitale, May 11, 2016 at ¶ 15 (AGENT_RPT_00000686).

[128] FBI Form FD-302, Memorandum of Interview of Keith Siilats, June 18, 2015 at 5 (AGENT_RPT_00000255).

[129] *Id.* at 7.

[130] FBI FD-302, Interview of Dayne LaHood, Feb. 10, 2016 at 3 (AGENT_RPT_00000013).

advised that KARLA GONZALEZ was dating SCHOCK for a short time. HOERR met her three times in Peoria: HOERR was aware that she and SCHOCK went on a Mediterranean cruise with friends from Peoria. HOERR was unaware of any trips they took to Chicago together."[131]

The government also discussed these topics with Representative Jason Smith, *a sitting Member of Congress*: "SMITH advised that in May of 2015, he, SCHOCK, KARLA GONZALES, SHEA LEDFORD and two other individuals vacationed in Jamaica: SMITH believes SCHOCK and GONZALES shared a room."[132] The same document reports: "SMITH believes that SCHOCK liked [Karla Gonzales] and they dated for a period of time."[133]

The government even went so far as to interview James Merrill, *a man who has never met Mr. Schock and who has no connection to this case*, but who had been in a romantic relationship with Karla Gonzalez around or during part of the time period that she and Mr. Schock were involved. The FBI report states in part: "MERRILL has never met SCHOCK in person and believed he was 'gay'. GONZALEZ told MERRILL that she didn't think SCHOCK was 'gay.' MERRILL believes that GONZALEZ had her own cabin on the cruise and SCHOCK furnished a ticket for her."[134] The report later notes: "MERRILL did not believe that GONZALEZ dated SCHOCK."[135] That the government interviewed a man *who had never met* Mr. Schock regarding Mr. Schock's relationship with Ms. Gonzalez is astonishing and inappropriate in its own right.

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[131] FBI Form FD-302, Interview of Tania Hoerr, Mar. 9, 2016 at 1 (AGENT_RPT_00000018).

[132] FBI Form FD-302, Memorandum of Interview of Jason Smith, Mar. 30, 2016 at 2 (AGENT_RPT_00000056).

[133] *Id.* at 3.

[134] FBI Form FD-302, Memorandum of Interview of James Merrill, May 25, 2016 at 1 (AGENT_RPT_00000212).

[135] *Id.* at 2.

The issue of Mr. Schock's sexuality also arose in an interview with Jeannie Etchart, Mr. Schock's second Executive Assistant. Although witnesses have confirmed Ms. Etchart's strong feelings for Mr. Schock, she attempted to minimize her feelings for Mr. Schock and added her own allegation that she thought Mr. Schock was gay during an interview:

> When questioned about her feelings for SCHOCK, ETCHART advised that in February of 2011 or early in her employment with SCHOCK, she saw that SCHOCK was a young, attractive and exciting person. The thought of "could there be something there" between she and SCHOCK did cross her mind. As time went on they became good friends/buddies and ETCHART saw that SCHOCK was 'high maintenance". ETCHART thought SCHOCK was gay.[136]

Federal agents not only talked to Steven Shearer, Mr. Schock's first Chief of Staff, about Mr. Schock and Ms. Gonzalez's relationship, they appear to have extensively discussed allegations regarding Mr. Schock's sexuality, *including whether Mr. Shearer had "evidence" of Mr. Schock being gay (which he did not)*:

> When questioned about the relationship between SCHOCK and GONZALEZ, SHEARER advised that SCHOCK met her in May of 2013. The relationship got more serious but SHEARER left soon after that. ETCHART may have confided in MARK ROMAN about being jealous of GONZALEZ.
>
> SHEARER advised that SCHOCK was upset with the blogs and media comments about his sexuality. SCHOCK denied the allegations and resented the accusations but SHEARER believes that SCHOCK did things that seemed "gay". SHEARER criticized SCHOCK on behaving in a way that would make people question his sexuality. SHEARER has no evidence of SCHOCK being "gay."[137]

Despite all this testimony, nothing appears in the record to show that these questions were relevant to any legitimate issue in a criminal investigation.

Finally, Mr. Schock's sexuality again came up directly in front of the grand jury during Jonathon Link's testimony. Following questions by the prosecutor probing whether Mr. Link was

[136] FBI Form FD-302, Interview of Jeannie Etchart, Oct. 25, 2016 at 1 (AGENT_RPT_00000316).
[137] FBI Form FD-302, Interview of Steven Shearer, Apr. 25, 2016 at 4 (AGENT_RPT_00000159).

Mr. Schock's "personal photographer," Mr. Link volunteered that he eventually decided to arrive at events separately from Mr. Schock because of "rumors out there where I was like his personal companion or something like that." Mr. Link elaborated:

> I was thinking about it, I was like okay, if I'm going to be known as like Aaron's gay lover, I may not really want to be seen with him anymore because, you know, it's like – obviously like for me it's not true but like now like this rumor is starting to get out there.[138]

It is true that Mr. Bass had not directly asked about Mr. Schock's sexuality and did not elicit that specific response. *But he did follow up on it*:

> Q: And just to finish – just to ask a couple questions since you brought it up. You were spending a lot of time with Mr. Schock on a daily basis, at least when he was in the district; is that right?
>
> A: Yeah.
>
> Q: You would accompany him almost everywhere he went?
>
> A: Pretty much, yeah. I mean, I was – I was always there working.
>
> Q: So you would have been one of the people that worked most closely with – with him and –
>
> A: Yeah, I mean like –
>
> Q: You were with him the most?
>
> A: Yeah. It seemed like it was me – me and Shea definitely spent probably like the most time with him.
>
> Q: And the allegations that you raised that I didn't ask you about, you affirmatively said not true; right?
>
> A: Yeah, it's not true.[139]

The government has yet to convincingly explain the relevance of these discussions.

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[138] Transcript of Testimony of Jonathon Link, Aug. 6, 2015, 71:7-24 (GJ_TRANSCRIPT_00007133).

[139] *Id.* at 72:9 – 73:5.

ARGUMENT

This motion seeks an extraordinary remedy. But this is an extraordinary case. Allegations of prosecutorial misconduct are rare. This is rightly so, as the overwhelming majority of prosecutors adhere to the highest ethical standards in the pursuit of justice.

Regrettably, it has not been the case here. As detailed above, Assistant United States Attorney Timothy Bass and the USAO engaged in a wide variety of misconduct throughout their investigation of Mr. Schock. The actions described are not just troubling. Nor are they just disappointing deviations from the heightened standards demanded of federal prosecutors. Rather, these deliberate acts require dismissal of the indictment because they raise grave doubt that the decision to indict Mr. Schock was free from the substantial influence of this misconduct.

Following an overview of the heightened ethical duties demanded of federal prosecutors and of the applicable legal standards governing the consideration of prosecutorial misconduct claims, we explain herein that dismissal of the indictment is warranted because (1) Mr. Bass repeatedly provided false and misleading evidence to key witnesses and the grand jury, prejudicing both; (2) intimidated and harassed witnesses before the grand jury, prejudicing both; (3) misstated the law to witnesses in front of the grand jury; and (4) potentially inflamed the opinions of the grand jurors through questioning and innuendo about Mr. Schock's sexual orientation and romantic relationships. Much of this troubling conduct alone merits dismissal. But its cumulative impact demands it.

I. The heightened duty of the federal prosecutor

Federal prosecutors wield tremendous power. This is perhaps never more so than when they stand alone before a grand jury and behind walls closed to counsel and court. In return for conferring such power, and to provide a check against its abuse, our system imposes heightened duties of ethical conduct and candor upon prosecutors.

As the Supreme Court has famously expressed, an attorney for the United States is "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S 78, 88 (1935). This notion has likewise been enshrined in American Bar Association standards:

> The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances.[140]

Such standards likewise recognize that "[i]n light of the prosecutor's public responsibilities, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations."[141]

When a prosecutor violates these standards, the results devastate individual liberty. This is particularly so during the investigatory phase and through the use of a grand jury cloaked in secrecy. As former Attorney General and Justice Robert Jackson articulated long ago, the greatest danger of the abuse of prosecutorial power arises when a prosecutor picks a man and then searches for a crime to pin on him:

> If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act

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[140] ABA Criminal Justice Standards for the Prosecution Function, 3-1.2(b), *Functions and Duties of the Prosecutor* (4th ed.). All United States Attorneys are urged to know the Standards because courts routinely rely upon them to adjudicate criminal justice issues. *See* U.S. Attorney's Manual § 9-2.101.

[141] *Functions and Duties of the Prosecutor* at 3-1.4(a), *The Prosecutor's Heightened Duty of Candor* (4th ed.).

> on the part of almost anyone. In such a case, *it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm . . . that the greatest danger of abuse of prosecuting power lies.*[142]

These words apply with full force here. The prosecutor did not discover a crime and attempt to determine who committed it. He picked Aaron Schock and set out to pin an offense on him.

AUSA Bass's conduct in investigating Mr. Schock failed to uphold the trust and standards demanded of federal prosecutors. But more than that, it prejudiced Mr. Schock in front of the grand jury. And that is why the indictment should be dismissed.

II. Dismissal of an indictment is warranted where prosecutorial misconduct raises grave doubt that the grand jury's decision to indict was free from substantial influence

Mr. Schock recognizes that, in general, "[a]n indictment returned by a legally constituted and unbiased grand jury . . . if valid on its face, is enough to call for trial of the charge on the merits." *Costello v. United States*, 350 U.S. 359, 363 (1956). Because the grand jury is "functional[ly] independen[t] from the Judicial Branch," courts are "reluctant to invoke the judiciary supervisory power as a basis for prescribing modes of grand jury procedure." *United States v. Williams*, 504 U.S. 36, 48-50 (1992). For instance, "an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence." *United States v. Calandra*, 414 U.S. 338, 345 (1974).

Dismissal of an indictment is accordingly rare. Nevertheless, where circumstances demonstrate that a prosecutor has interfered with the normal and unbiased functioning of the grand jury, courts have intervened to ensure that the Fifth Amendment's guarantee that a defendant be indicted by an unbiased grand jury is not rendered a nullity. *See, e.g., United States v. Hogan*, 712

[142] The Honorable Robert H. Jackson, Attorney General of the United States, *The Federal Prosecutor*, An Address Delivered at the Second Annual Conference of United States Attorneys (Apr. 1, 1940) (emphasis added).

F.2d 757, 761 (2d Cir. 1983); *United States v. Samango*, 607 F.2d 877, 884 (9th Cir. 1979); *United States v. Breslin*, 916 F. Supp. 438, 442-46 (E.D. Pa. 1996); *United States v. Lawson*, 502 F. Supp. 158, 172 (D. Md. 1980); *United States v. Leeper*, No. 06-CR-58A, 2006 WL 1455485, at *2–3 (W.D.N.Y. May 22, 2006). Moreover, "[d]ismissing an indictment to punish the government for its misconduct . . . entails no implicit second-guessing of the grand jury and thus steers clear of the prohibition of *Williams*." *United States v. Strouse*, 286 F.3d 767, 773 (5th Cir. 2002).

A. Court intervention is appropriate when prosecutors usurp the grand jury's independence in violation of Fifth Amendment rights

A district court should invoke its "supervisory power" over the grand jury "to dismiss an indictment because of misconduct before the grand jury," where prosecutors have violated "one of those 'few, clear rules which were carefully drafted and approved by this Court and by Congress to ensure the integrity of the grand jury's functions.'" *Williams*, 504 U.S. at 46 (quoting *United States v. Mechanik*, 475 U.S. 66, 74 (1986) (O'Connor, J., concurring in judgment)).

The Fifth Amendment's Grand Jury Clause—guaranteeing a right to an indictment by an independent and impartial panel only—is undoubtedly one such rule. Thus, where a defendant establishes that a prosecutor's misconduct either "substantially influenced the grand jury's decision to indict," or raises "grave doubt that the decision to indict was free from [such] substantial influence," the law is clear that "dismissal of the indictment is appropriate." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988) (citation and quotation marks omitted). "Based on the[] principles established by the Supreme Court," the Seventh Circuit has held that such "'prejudice' occurs when the alleged violation had a substantial effect on the grand jury's decision to indict or when it was quite doubtful that the decision to indict was free from that violation's considerable influence." *United States v. Brooks*, 125 F.3d 484, 498 (7th Cir. 1997).

B. When weighing the effect of misconduct on the grand jury's independence, the Court should consider the cumulative, prejudicial effects of that misconduct

Courts should consider the "cumulative effect" of the prosecutor's misconduct "in determining whether the grand jury's independent role in returning the indictment was usurped." *United States v. Turner*, 620 F. Supp. 525, 527-28 (D. Col. 1985) *aff'd*, 799 F.2d 627 (10th Cir. 1986); *see also United States v. Hill*, No. S 88 CR 154 (MJL), 1989 WL 47288, at *3 (E.D.N.Y. Mar. 22, 1989) (holding that in "determining whether to dismiss an indictment, the court is free to view such instances of misconduct cumulatively"). As one court observed, it may be the case that "one, or perhaps some, of the . . . instances of misconduct would not, alone, justify dismissal of the indictment," nevertheless the "cumulative effect of the many instances of misconduct can fairly be said to have 'substantially influenced the grand jury's decision to indict.'" *Breslin*, 916 F. Supp. at 446.[143]

Prejudice accordingly must be assessed in light of the impact of the prosecutor's misconduct as a whole. For example, in *United States v. Aguilar Noriega*, the Court dismissed an indictment in light of multiple instances of misconduct, including that the Government "allowed a key FBI agent to testify untruthfully before the grand jury"; "it inserted material falsehoods into affidavits submitted to magistrate judges in support of applications for search warrants and seizure warrants"; it "improperly reviewed e-mail communications between one Defendant and her lawyer"; it "recklessly failed to comply with its discovery obligations"; it "posed questions to

[143] Other courts have followed suit. *See, e.g., Samango*, 607 F.2d at 884 ("The cumulative effect of the above errors and indiscretions, none of which alone might have been enough to tip the scales, operated to the defendants' prejudice by producing a biased grand jury."); *United States v. Peralta*, 763 F. Supp. 14, 21 (S.D.N.Y. 1991) (holding that "defendants were seriously prejudiced by the cumulative effect of the government's misleading statements of law"); *United States v. Roberts*, 481 F. Supp. 1385, 1389 (C.D. Cal. 1980) (holding that "the 'cumulative effect' of the prosecutor's actions deprived defendants of due process and operated to bias the Grand Jury.").

certain witnesses in violation of the Court's rulings"; it "engaged in questionable behavior during closing argument; and it even made misrepresentations to the Court." 831 F. Supp. 2d 1180, 1182 (C.D. Cal. 2011). Sadly, similar conduct has occurred here.

III. Because the government engaged in widespread acts of actionable misconduct, the indictment against Mr. Schock should be dismissed

Courts intervene to vindicate a defendant's Fifth Amendment rights where prosecutorial misconduct—including the cumulative effect of disparate acts—raises grave doubt about whether the indictment was free from the substantial influence of the prosecutor's misconduct. That standard is more than met here.

AUSA Bass and the USAO repeatedly engaged in significant misconduct throughout their investigation of Mr. Schock. Although some of the conduct occurred outside the walls of the grand jury, much of it, including perhaps the most pernicious conduct, took place directly before the grand jurors – namely, the prosecutor's repeated presentation of false or highly misleading facts and statements of law to witnesses testifying before the grand jury.

That alone merits dismissal. But dismissal is further warranted by the prosecutor's intimidation and harassment of these same witnesses; by his misstatements of law in front of multiple witnesses and the grand jury; and by the government's repeated, invasive questioning into Mr. Schock's sexual orientation and romantic relationships. Each of these bases are detailed in turn. Their cumulative effect only confirms that dismissal is appropriate.

A. The prosecutor repeatedly provided key witnesses and the grand jury with false or misleading evidence, prejudicing both

Providing key witnesses with false facts that impugn a defendant has the obvious effect of prejudicing those witnesses against the defendant. The prosecutor here engaged in such conduct with various witnesses, including two key witnesses who had presented favorable testimony towards Mr. Schock. By implanting false facts and impressions within the minds of these

witnesses, and by extension the minds of the grand jurors, the prosecutor has tainted them and irreversibly prejudiced Mr. Schock's rights to an unbiased grand jury or a fair trial.

1. The knowing provision of false or misleading evidence constitutes actionable prosecutorial misconduct

The prosecutor's knowing presentation of false or misleading evidence to the grand jury is the quintessential example of misconduct. As the Seventh Circuit has stated, "[t]he government's knowing use of false testimony violates due process," which may support a finding that the defendant was prejudiced. *United States v. Useni*, 516 F.3d 634, 656 (7th Cir. 2008).

Moreover, although the Supreme Court has recognized that a prosecutor need not provide exculpatory evidence to the grand jury, *see Williams*, 504 U.S. at 51-52, it is equally plain that "a prosecutor may not deliberately mislead a grand jury or instill false impressions to it in an effort to obtain an indictment." *United States v. Red Elk*, 955 F. Supp. 1170, 1182 (D.S.D. 1997). This is so because introduction of misleading testimony by the government or its agents, especially when the evidence is designed to impugn the defendant in front of the grand jury, can "pollute[] the waters of justice," making dismissal "necessary, to protect the integrity of the judicial process." *United States v. Asdrubal-Herrera*, 470 F. Supp. 939, 943 (N.D. Ill. 1979) (quoting *Mesarosh v. United States*, 352 U.S. 1, 14 (1956) and *United States v. Leibowitz*, 420 F.2d 39, 42 (2d Cir. 1969)) (quotation marks omitted).

As demonstrated by *United States v. Lawson*, the government's privilege to present its side of the story to the grand jury does not entitle it to simply ignore exculpatory evidence that renders its presentation misleading. 502 F. Supp. 158. Just as in this case, the defendant's intent in *Lawson* was of critical importance; there, the issue was the defendant's intent in writing prescriptions. *Id.* at 161. The government had obtained records that corroborated a key part of the defendant's story and that demonstrated he took steps to verify that the prescriptions were bona fide. *Id.* at 162.

Nevertheless, when interviewing a witness whose testimony was also corroborated by the records, the prosecutor "embarked upon a grueling cross-examination [of the witnesses] apparently designed to give the jurors the impression that" the witness was simply trying to cover for the defendant. *Id.* Indeed, "the prosecutor attempted to create the impression that [the] records established" that the verification attempt was never made. *Id.* at 162 n.7.

The court agreed with the defendant that this line of questioning "was an affirmative attempt both to discredit" the witness "and to turn exculpatory evidence into inculpatory evidence," holding that "the prosecutor's questions . . . were deliberately misleading and calculated to create a false impression on the grand jury." *Id.* at 162-63. Indeed, the government was forced to concede the impropriety of the prosecutor's actions, and he was no longer associated with the case. *Id.* at 163, 172-73. More importantly, the court dismissed the indictment. *Id.* at 172.

Courts have also dismissed indictments where the prosecutor presented misleading evidence with the intent to portray the defendant in a negative light. A prosecutor cannot "inflame or otherwise improperly influence grand jurors against any person." *United States v. Gold*, 470 F. Supp. 1336, 1346 (N.D. Ill. 1979). And as a panel of the Eleventh Circuit has observed, "[d]erogatory statements about the character of a defendant or statements about other crimes a defendant may have committed are improper because they have a tendency to inflame the grand jury-thereby infringing on the grand jury's obligation to find probable cause based on competent evidence." *United States v. Sigma Int'l, Inc.*, 244 F.3d 841, 872 (11th Cir. 2001), *vacated and reh'g en banc granted*, 287 F.3d 1325 (11th Cir. 2002).[144]

[144] The *Sigma International* case has a curious procedural history. The full Eleventh Circuit voted to take the case en banc, thus vacating the opinion. *See United States v. Sigma Int'l, Inc.*, 291 F.3d 765 (11th Cir. 2002) (per curiam). However, before en banc proceedings were held, the parties agreed to a plea deal. Thus, the panel's decision, although vacated, stands as the last statement by the Eleventh Circuit on the matter.

As confirmed by the facts above, and as explained below, AUSA Bass and the USAO have repeatedly engaged in the very type of behavior condemned by courts. Most egregious has been the repeated presentation of false or misleading facts to witnesses and the grand jury.

2. The government's provision of false facts and law raises grave doubt about the Indictment against Mr. Schock

The government's treatment of Ms. Haney and Ms. Rogers, as well as other witnesses, demonstrated a systematic and deliberate effort to mislead the grand jury and overbear its independent function. "The government's knowing use of false testimony, or failure to correct testimony, violates due process." *United States v. Burke*, 425 F.3d 400, 412 (7th Cir. 2005). Moreover, "a prosecutor may not deliberately mislead a grand jury or instill false impressions to it in an effort to obtain an indictment." *Red Elk*, 955 F. Supp. at 1182. There can be no doubt that Mr. Bass knew that the information he was presenting to the grand jury was misleading.

Mr. Schock's intent was the key element the government had to show in order to indict him. In short, the government had to convince the grand jury that the transactions it alleged were criminal were indeed the result of fraud, and were not oversights, mistakes, or otherwise innocent conduct. It did so by fabricating intent from false facts.

As detailed *supra* at Facts § I.A, in order to demonstrate Mr. Schock's intent to retain the Super Bowl ticket sale proceeds, the government concocted a theory premised on the (faulty) notion that Mr. Schock did not have sufficient funds in his bank account to reimburse Mr. Etchart for his payment of legal fees, and that Mr. Schock must therefore have knowingly deposited the proceeds of a sale of Super Bowl tickets that were paid for with campaign funds into his account so that he could pay that debt. The key evidence that the government presented to Ms. Haney and the grand jury to substantiate this narrative, which is charged in the Indictment, was that Mr. Schock did not have sufficient funds in his bank account to cover the legal fees.

That is demonstrably false: Mr. Schock had over $130,000 in his joint checking and savings account. Yet rather than acknowledge to Ms. Haney, Ms. Rogers, or Ms. Honegger that Mr. Schock had sufficient funds in his joint account to cover the transaction—or that Mr. Schock's savings account routinely covered checks drawn on his checking account—the government instead chose to selectively direct witnesses solely to the balance of his checking account.

There is no doubt that the government intended to direct witnesses to specific numbers. In Ms. Haney's case, for example, AUSA Bass showed her an "annotated" copy of the account statement that had a black circle and a large red arrow directing her where to look: "So in the – shortly after the sale – the deposit of the – do you see the balance in the CEFCU account just before the deposit of the sale of the Super Bowl tickets? 1791.76 I believe is the total. Do you see that? . . . . I'm looking at the red circle – the black circled number."[145]

Nor is there any doubt what inference Mr. Bass intended Ms. Haney to draw:

> Q: And at the time then that Mr. Schock wrote that check, *again this is the balance*, he would not have had enough money *in his bank account* to cover that $7500 check. Do you see that?
>
> A: Yes.
>
> Q: But when he deposited the sale of the Super Bowl tickets proceeds, now he has enough funds in the account to cover the $7500 check. Do you see that?
>
> A: Yes.[146]

AUSA Bass did the same with Ms. Rogers: "and at the time he deposited the proceeds he didn't have the money in the account to cover that $7500 check that he later wrote to Mr. Etchart."[147]

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[145] Transcript of Testimony of Karen Haney, June 1, 2016, 52:7-19 (GJ_TRANSCRIPT_00001971).

[146] *Id.* at 54:25-55:9 (emphasis added).

[147] Transcript of Testimony of Sarah Rogers, June 3, 2016, 29:12-30:19 (GJ_TRANSCRIPT_00008973).

Indeed, lest there be any question about AUSA Bass's intent to sow doubts about Mr. Schock to witnesses who knew nothing about the transactions at issue, he directly and falsely told Mr. Schock's first campaign director, Rachel Honegger, in front of the grand jury, that Mr. Schock "*sold Super Bowl tickets to cover the check.*"[148] There is no indication in the record, either from the transcript of Ms. Honegger's testimony or the exhibits attached thereto, that Mr. Bass bothered to show her the account statement, let alone mention that Mr. Schock had sufficient funds to pay for the legal fees. Instead, Mr. Bass ignored these pertinent and exculpatory facts and left Ms. Honegger with the distinct impression that Mr. Schock had sold Super Bowl tickets so he could pay the legal fees.

Based on its previously-filed response to our initial prosecutorial misconduct motion, the government's rejoinder is that (1) the government presented the entire bank statement to the grand jury, and (2) that it mentioned Mr. Schock's ability to pay for the check through overdraft coverage to the second grand jury through the testimony of FBI Agent Kim Edge. Regarding the former, as seen above, the government unmistakably directed the witnesses' and the grand jury's attention on the checking account—via a large red arrow no less. And in the case of Ms. Honegger, Mr. Bass made the direct, false connection without reference to the bank statement at all.

As for the latter, the government's *post hoc* attempt to cure its former misconduct (which it undertook only after we had raised concerns about the government's use of the bank statement) by advising the second grand jury of the overdraft coverage fails to remedy the wrongdoing for at least two reasons. First, there is no evidence that the government ever informed Ms. Haney, Ms. Rogers, or Ms. Honegger about the savings account balance or the overdraft protection. Instead,

[148] Transcript of Testimony of Rachel Honegger, June 22, 2016, at 41:20 – 42:9 (GJ_TRANSCRIPT_00001071) (emphasis added).

the government knowingly sowed doubts about Mr. Schock's intent into the minds of witnesses who lacked the personal knowledge regarding the events to form an unbiased opinion. This could well have seeded further doubts or caused those witnesses to see other innocent conduct in a misleading light. The damage is irreversible. Nor was this an acceptable tactic designed to get truthful testimony from a witness. Rather, it is the prosecutor testifying to the facts – which are not true – and thereby improperly influencing the testimony of witnesses. A private lawyer doing the same would risk indictment for such conduct.

Second, the agent's testimony in November 2016 to the second grand jury failed to cure the government's misconduct—and in fact was itself further misleading. AUSA Bass undercut the exculpatory impact of the savings account balance (1) by burying it after a detailed explanation about how the deposit of the ticket proceeds in part funded the legal fees payment; (2) through a misleading emphasis on the fact that Mr. Schock's mother was a joint account member; and (3) by stating that overdraft protection was not necessary *because the ticket proceeds had been deposited:*

> Q: So the ticket proceeds at least in part funded the – from this account funded the check to Mr. Etchart?
>
> A: Correct.
>
> Q: Now, Mr. Schock also had a savings account at that time with over – this checking account had overdraft protection, and Mr. Schock had a savings account *with his mother* at that time; is that right?
>
> A: That's right.
>
> Q: And the balance of the savings account was over a hundred thousand dollars?
>
> A: Correct.
>
> Q: So it's not that Mr. Schock did not have the ability through overdraft protection to fund the check to Mr. Etchart; right?
>
> A: Correct.
>
> Q: He had that ability; correct?

A: Correct.

Q: *But because the proceeds of the ticket sales were deposited, that wasn't necessary; was it*?

A: Right.[149]

This exchange—which occurred after counsel for Mr. Schock had questioned the government's misleading use of the bank statement in a June 2016 meeting—reflects that rather than recognizing that it had no evidence of intent to charge Mr. Schock with a crime related to the Super Bowl tickets, the government instead shifted to an argument that Mr. Schock knowingly converted the ticket proceeds *so that he did not have to use his and his mother's savings account.*

But this newfound theory is just as misleading and is just as contradicted by the same documents because *the checking account that he used to pay the legal fees is also a joint account with his mother*. The fact that his mother is a joint account holder is completely irrelevant. The government has cited no evidence that her presence on the savings account made Mr. Schock any less likely to use those funds than he would be to use funds in his checking account that she was also a joint member of, or that she exercised any control over either account at any point.[150] It is a total red herring.

[149] Transcript of Testimony of Kimberly Edge, Nov. 3, 2016, at 45:14 – 46:11 (GJ_TRANSCRIPT_00010739) (emphases added)

[150] In fact, the government knows that when Mr. Schock and his mother on occasion gave some amount of money to one another, they did so by writing checks to each other from separate accounts. The government knows this because it called Mr. Schock's mother before the grand jury, and her testimony makes clear that she and her son had and used separate bank accounts. *See, e.g.*, Transcript of Testimony of Janice Anseth, June 3, 2015, at 45 (GJ_TRANSCRIPT_00006274) (confirming she wrote Mr. Schock a check from *her* CEFCU account, and that at times she would deposit checks on his behalf that had been written to him by others, such as rent checks, into "his own personal account"); *id.* at 97-98 (confirming that her account and that his account were at the same bank). The government knows that her status as a joint member on the account did not mean the cash therein was some pooling of their assets.

In sum, the government misled Ms. Haney, as well as Ms. Rogers and Ms. Honegger, regarding Mr. Schock's bank statement and never corrected the record with them. Before the grand jury, it tried both to defend its misconduct and salvage its theory of intent by misleadingly emphasizing that the savings account was a joint account with Mr. Schock's mother despite the government's knowledge that Mr. Schock and his mother maintained separate accounts at CEFCU.

Without a theory of intent, the government simply has no case on these charges other than *post hoc ergo propter hoc* – the logical fallacy that argues "after this, therefore because of this." The deposit of proceeds into his account was chronologically followed by the payment of fees (some *two weeks* later). But it simply does not follow, indeed it is absurd to argue, that Mr. Schock knowingly broke the law by converting campaign funds to his personal use simply to fund a $7,500 payment that he could afford to make nearly 20x over and that he could be legally reimbursed for in any event. Yet the government succeeded in charging this conduct by misleading evidence, and did so in a way that improperly influenced the testimony of key witnesses.

Although the deliberately misleading presentation of the account statement is the starkest example of the government's misconduct, the government did the same thing with regard to the payment to Green Chevrolet and its recitation of the applicable law regarding campaign finance expenditures described *supra* at Facts §§ I.B, II.E. The government simply had no factual basis to persist in its theory that Mr. Schock *caused* Schock for Congress to pay off the outstanding loan on his 2010 Chevrolet Tahoe once Green Chevrolet's owner confirmed that the payoff occurred because of a dealership mistake. In light of that fact, the government's persistence in telling witnesses like Ms. Haney that Mr. Schock caused the improper payoff raises a strong inference that the prosecutor was seeking to influence her and the grand jury with fictional innuendo.

It bears emphasis that Mr. Schock is not challenging the competency or sufficiency of the evidence before the grand jury.[151] Instead, Mr. Schock's objection "is not to the insufficiency of the evidence but to the prosecutor's *knowledge of its insufficiency*, which makes the case one of prosecutorial misconduct." *United States v. Roth*, 777 F.2d 1200, 1204 (7th Cir. 1985) (emphasis added). "What makes the government's knowing use of perjured testimony different is that it involves *an element of deceit*, which converts the issue from the adequacy of the indictment's evidentiary basis to fraudulent manipulation of the grand jury that subverts its independence." *Id.* (emphasis added).

Nor is Mr. Schock asserting that the government failed to present exculpatory information to the grand jury. *See Williams*, 504 U.S. at 51. Mr. Schock's contention, as in *United States v. Samango*, is "that the prosecutor's behavior was so improper and prejudicial that it created a biased grand jury." 607 F.2d at 880-81. There is clear evidence here that the government used false and misleading information to advance its theory of the case, which deprived Mr. Schock of his right to have an independent grand jury return the Indictment.

Indeed, the government's conduct here closely resembles the misconduct that led to the dismissal of the indictment in *United States v. Lawson*. Just as here, the government in *Lawson* knew of information that directly contradicted its theory, and yet it engaged in "a grueling-cross examination of [the witness] apparently designed to give the jurors the impression" that the government's theory was correct, regardless of the contradictory information. *Lawson*, 502 F. Supp. at 162. The government could offer no basis for its line of questioning, leading the court to conclude that it had deliberately misled the grand jury. *Id.* at 162-63.

[151] Mr. Schock recognizes that such challenges are generally out of bounds. *See Calandra*, 414 U.S. at 345.

The same is true here: there is no basis for the government's assertion that Mr. Schock sold the Super Bowl tickets to cover the legal fees, or that the payment to Green Chevrolet was improper, aside from its own conjecture. Such testimony by the prosecutor is impermissible. *See United States v. Birdman*, 602 F.2d 547, 551-54 (3d Cir. 1979); *Breslin*, 916 F. Supp. at 443 (dismissing indictment where "the prosecutor improperly characterized the evidence and inserted his opinions regarding the strength and weight of the evidence"). Where the government has only its own suspicions, which are directly contradicted by the evidence in its possession, the presentation of those suspicions as facts is inherently misleading.

Therefore, the question before the court is whether there is a grave doubt that the government's deception substantially influenced the grand jury's decision to indict. Unlike other defendants, Mr. Schock need not speculate. One purpose of the government's conduct was to show that Mr. Schock had fraudulent intent with respect to the purchase of the Super Bowl tickets. One of the grand jurors who served on the grand jury identified to a third party that the Super Bowl tickets were one of the "areas of the case" that the grand jury considered. Ex. B. This is *prima facie* evidence that Mr. Schock was prejudiced by the government's misconduct.

In a broader sense, the government's misleading and false presentation was aimed at proving intent, not just for the specific transactions at issue but to taint and undermine the testimony of witnesses who directly refuted the government's intent evidence. Intent was and is the most critical element of this case; the prosecutor's deliberate and systematic efforts to mislead the grand jury as to the evidence of Mr. Schock's intent raise a grave doubt that the grand jury's decision to indict was improperly influenced.

Mr. Bass's intent to influence Ms. Haney's testimony and opinions of Mr. Schock by providing her with information outside her personal knowledge (and which included false

information) is clear. In connection with the false connection between the Super Bowl tickets and the legal fees, Mr. Bass asked Ms. Haney before the grand jury, "would this have been one of the areas where you were – became aware of information that you had not previously been aware of?"[152] But he was not simply confirming that he had provided her with new information (which was false), he expressly acknowledged the type of impact that providing such information would have: "this is where there were certain times during the interview *where you kind of had a realization of things that you had not previously been aware of.*"[153]

There can be no doubt as to Mr. Bass's intent in feeding her this misinformation: he wanted her to think Mr. Schock had engaged in misconduct and that he had done so behind her back. Because witnesses can only provide evidence as to their personal knowledge, the only point to telling her about things outside of her personal knowledge would be to raise doubts in her mind about Mr. Schock and to cause her to question her beliefs about his conduct as a whole. Worse still, it appears Mr. Bass provided her such information specifically to cause her to *change* her previous exculpatory testimony that she believed Mr. Schock had done everything he could to ensure that campaign funds were not used to pay personal expenses.[154] The report of Ms. Haney's final proffer session substantiates this:

> Bass reminded Haney that in the first Grand Jury when asked the question if she thought Schock had done all he could to document mileage, she replied yes. Bass then asked Haney if she would respond the same way now, *knowing all the*

[152] *See* Transcript of Testimony of Karen Haney, June 1, 2016, 41:17 – 42:1 (GJ_TRANSCRIPT_00001971).

[153] *Id.* at 58:6-9 (emphasis added).

[154] Transcript of Testimony of Karen Haney, July 10, 2016 at 29:14-18 (GJ_TRANSCRIPT_00004008) ("Q: Based on what you've said about difficulty and everything else, did Aaron Schock do all he could do to ensure that campaign funds were not used to pay his personal expenses? A: Yes.").

> *information she has been given and the misapplication by Schock.* Haney replied that after seeing it all, she would not answer those questions the same way.[155]

The "information she has been given" by the government about "the misapplication by Schock," however, included demonstrably false facts, unsupported inferences, and incorrect statements of law. Mr. Bass's question in this final interview, and Ms. Haney's answer, thus proves that this conduct was more than insidious, it was prejudicial.

B. The prosecutor's intimidation and harassment of key witnesses before the grand jury further supports dismissal of the Indictment

The prosecutor's harassment of Ms. Haney and Ms. Rogers, detailed extensively *supra* at Facts §§ I.C, II.A-C., was not merely poor form; it constitutes two additional grounds for dismissal of the indictment. First, the government's threat to charge Ms. Rogers with obstruction, its threat to withdraw Ms. Haney's immunity, and its concealment of its threat to Ms. Haney warrant dismissal of the indictment because of the impact such intimidation likely had on those witnesses. Second, the government's barring of Ms. Haney's and Ms. Rogers' counsel from participating in proffer sessions for the express purpose of preventing information from being shared with Mr. Schock provides further grounds for dismissal because it reflects a denial of Mr. Schock's right to defend himself. Both are discussed in turn.

1. The government's threats of obstruction and prosecution could have tainted key witness testimony

The government raised the specter of potential prosecution with both Ms. Rogers and Ms. Haney after they had provided exculpatory information about Mr. Schock. The circumstances surrounding these baseless threats suggest the government's apparent motive in making them was to persuade them to testify more to the government's liking.

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[155] U.S. Postal Inspector, Memorandum of Interview of Karen Haney, Nov. 2, 2016 (emphasis added) (AGENT_RPT_00001006).

Particularly egregious was the prosecutor's threat to charge Ms. Rogers with obstruction of justice. *See supra* Facts § II.C. Courts have admonished the government not to overstep its bounds in threatening a witness in front of the grand jury with criminal sanctions, noting that "prosecuting attorneys should exercise considerable restraint when advising potential witnesses of the consequences of committing perjury." *United States v. Risken*, 788 F.2d 1361, 1371 (8th Cir. 1986); s*ee United States v. Pino*, 708 F.2d 523, 531 (10th Cir. 1983); *Red Elk*, 955 F. Supp. at 1180. This admonishment is even more pertinent when the government threatens a witness with obstruction of justice. Rather than a simple reminder to tell the truth, the government's repeated threats to Ms. Rogers that she could be charged for obstruction of justice for not having a specific recollection or not understanding the government's question was more likely to communicate that her liberty was in danger if she did not testify as the government desired.

The government could not have charged Ms. Rogers for obstruction of justice merely because she did not offer a direct answer to the government's inartful questioning. As four judges on the Ninth Circuit's *en banc* panel observed in *United States v. Bonds*, "[t]he truth-seeking function of the grand jury may be impaired by lax questioning as much, if not more than, an inarticulate or wandering answer." 784 F.3d 582, 588 (9th Cir. 2015) (en banc) (N.R. Smith, J., concurring).[156] Thus, before the government may charge a grand jury witness with obstruction of justice for an answer that the government deems to be unresponsive, it "is obligated to do all it can to obtain a direct statement in response to its questioning." *Id.* In other words, the government made an empty threat to a witness that she could face ten years in prison for not testifying to the

[156] No opinion commanded the six-judge majority necessary to become the opinion of the en banc court. Therefore, the en banc court issued a per curiam opinion, without analysis, finding the evidence insufficient to support a conviction for obstruction of justice where the defendant "gave a rambling, non-responsive answer to a simple question." *Bonds*, 784 F.3d at 582.

government's liking. In addition, the government communicated to the grand jury that it considered Ms. Rogers's testimony to be obstructive.

Although the government did not directly threaten Ms. Haney with obstruction of justice as it had Ms. Rogers, the government did threaten to withdraw her immunity agreement and then took affirmative steps to conceal that it had made that threat. *See supra* Facts § I.C. This is further grounds for a finding of misconduct. As the Supreme Court observed in *Bank of Nova Scotia*, the government commits misconduct when it "threaten[s] to withdraw immunity from a witness in order to manipulate the witness' testimony," which has the potential to give "rise to a finding of prejudice." 487 U.S. at 262.

Being tough on a witness as to whom the prosecutor has a good faith belief that the witness is lying is not improper, but a pattern of threats and other intimidation designed to bend a witness's testimony to the prosecutor's will clearly is wrong. Concealing that conduct, as occurred here with the government's revision of a government report to affirmatively misstate that Ms. Haney had never been threatened, compounds both the error and the prejudice to a defendant from it. *See United States v. Omni Int'l Corp.*, 634 F. Supp. 1414, 1425-27 (D. Md. 1986) (holding that government committed misconduct by revising and creating new agent reports in response to concerns raised by defendant).

Both Ms. Rogers and Ms. Haney had provided exculpatory information regarding Mr. Schock. AUSA Bass reacted by challenging both and questioning their basis of knowledge. Yet both provided detailed explanations and specific examples supporting their testimony. Facing such testimony from two of the most important witnesses in the case, the prosecutor resorted to harassment and intimidation in the hopes that they would waver. This was misconduct.

2. The government restricted the defense's access to information

It is also misconduct for the government to "instruct a witness not to speak with the defense or otherwise artificially restrict the defense's access to a witness." *United States v. Linder*, No. 12 CR 22, 2013 WL 812382, at *43 (N.D. Ill. Mar. 5, 2013). Both Ms. Rogers and Ms. Haney testified that they did not think they could provide information to their own counsel. And as Mr. Bass made clear—in front of the grand jury no less—the government objected to their counsel obtaining information because the government did not want him to share it with Mr. Schock. *See supra* Facts § I.C (Haney); § II.A (Rogers). The effect was thus to deprive Mr. Schock of information for his defense.

Indeed, Ms. Rogers had the distinct impression early on in the investigation that she could not talk to Mr. Schock's counsel: "Now I know I can meet with Aaron's attorneys. *Then I thought it was not okay for me to meet with Aaron's attorneys.* Not because of anything specific that you had said but just because I was told – or, I thought that we couldn't talk about anything that happened."[157] Although the prosecutor may not have expressly told her not to talk to Mr. Schock's counsel, she clearly inferred this based on the government's indication that information from her proffer sessions could not be shared *with her own lawyer*. As Mr. Bass himself explained to her: the government had finally agreed to extend the less-confrontational option of a proffer session "provided that Mr. Beckett would be the attorney that would represent you during these meetings *and that he would not be sharing any information with Mr. Coffield* or with any other clients."[158] Whether by directly leading Ms. Rogers to believe she could not speak to Mr. Schock's counsel, or by indirectly restricting the defense's access to information by prohibiting Mr. Coffield from

[157] Transcript of Testimony of Sarah Rogers, June 3, 2016, 73:13 – 74:4 (GJ_TRANSCRIPT_00008973) (emphasis added).

[158] *Id.* at 6:10-17.

learning information, the government's conduct caused Ms. Rogers to hesitate before meeting with the defense.

Ms. Haney likewise testified—several times in fact—that she did not believe that she could talk to Mr. Coffield either: "But I will say I certainly was under the impression that I was not to talk to my own attorney about what was taking place in proffer sessions."[159] Indeed, as Ms. Haney testified to the grand jury, she "was told that I wasn't to discuss anything from the proffer with Mr. Coffield, who is co-counsel with Mr. Beckett."[160] There is no doubt that the grand jury knew the government's intent here was to deprive her counsel of information; as a grand juror explained to Ms. Haney: "they didn't want your lawyer – the other lawyer to be in the session, not that you couldn't talk to him, but *he didn't want the lawyer hearing everything*."[161]

There is no need to speculate as to the government's motive with regard to Mr. Coffield. AUSA Bass himself has explained it. He was concerned that Mr. Coffield would share information with the defense. As he told Ms. Rogers in front of the grand jury:

> But you understood at that time that the government was unwilling – because of the concerns that the government laid out in the motion relating to Mr. Coffield's fees being paid by Mr. Schock and the fact that Mr. Coffield was communicating with Mr. Schock's counsel, and possibly sharing information that you provided not only with Mr. Schock's counsel but might be required to share information that you provided in a proffer with his other clients.[162]

Mr. Bass thus identified three potential bases for shielding information from Mr. Coffield: (1) that his fees were paid by Mr. Schock (actually Schock for Congress); (2) that he was communicating

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[159] *Id.* at 143:4-7; *see also id.* at 143:17-18 (confirming one of her attorneys [Mr. Coffield] "wasn't allowed to be in my proffer sessions"); *id.* at 145:18-20 ("I was definitely under the impression I couldn't tell him [Mr. Coffield] what took place in the proffer.")

[160] *Id.* at 144:16-18

[161] *Id.* at 145:12-17 (emphasis added).

[162] *See* Transcript of Testimony of Sarah Rogers, June 3, 2016, 5:16 – 6:9 (GJ_TRANSCRIPT_00008973).

with Mr. Schock's counsel; and (3) that he might (according to Mr. Bass) be required to share information with other clients.

The first and third reasons speak to potential conflicts of interest due to the indemnification of fees by another individual and risks inherent in a counsel's representation of multiple witnesses. These two alleged concerns, however, applied in equal measure to Steve Beckett, who was the local counsel to both Ms. Haney and Ms. Rogers, yet Mr. Bass allowed Mr. Beckett to participate in proffer sessions while continuing to expressly exclude his co-counsel Mr. Coffield. Thus, Mr. Bass's only basis for barring Mr. Coffield from proffer sessions, and for creating circumstances that led both Ms. Rogers and Ms. Haney to believe they could not share information with their own attorney, was that the government did not want Mr. Coffield to learn information and then share it with the defense.

Both Ms. Haney and Ms. Rogers were key witnesses who offered extensive exculpatory testimony. The government's efforts to intimidate them was misconduct, and combined with its other efforts to undermine and taint their testimony, there is a grave doubt that this misconduct substantially influenced the grand jury's decision to indict.

C. The government's misstatements of the law raise grave doubt about whether the grand jury's Indictment was free from substantial influence.

This Court has still further reason to doubt that the grand jury returned an indictment free from the government's improper influence: AUSA Bass repeatedly misstated relevant law to witnesses before the grand jury, thus strongly suggesting that the grand jury was either mis-instructed on the law, or at a minimum, that the jurors viewed permissible conduct to be illegal, which would obviously affect its decision to indict Mr. Schock.

"[W]here a prosecutor's legal instruction to the grand jury seriously misstates the applicable law, the indictment is subject to dismissal if the misstatement casts 'grave doubt that

the decision to indict was free from the substantial influence' of the erroneous instruction." *United States v. Stevens*, 771 F. Supp. 2d 556, 567 (D. Md. 2011) (quoting *United States v. Peralta*, 763 F. Supp. 14, 21 (S.D.N.Y. 1991)). Mr. Schock has separately renewed his motion for the grand jury colloquies, without which he cannot prove that mis-instruction occurred. But there is substantial support in the record that Mr. Bass misled witnesses before the grand jury—and thus misled the grand jury itself—regarding the law.

For example, Mr. Bass directly sought to influence Ms. Haney's testimony and her opinions about Mr. Schock's conduct and intent by suggesting to her how she should answer questions about campaign finance personal use law. Mr. Bass implied to Ms. Haney that using campaign funds to purchase ski lift tickets was illegal, arguing, "unless the campaign fundraiser was on the ski lift as we were going up to the top of the mountain, wouldn't – wouldn't skiing potentially be a personal expense as opposed to a campaign expense?"[163] Mr. Bass was wrong on the law,[164] but after Ms. Haney expressed hesitation in responding to his erroneous question, he told her what a more "appropriate" response would be: "Wouldn't the appropriate answer to my question about whether or not Mr. Schock did all he could to ensure that personal expenses were not paid for with campaign funds be I don't know rather than yes?"[165]

Mr. Bass thus directly sought to convince Ms. Haney to change an exculpatory answer into an equivocal one that he found more "appropriate." This in itself is akin to the misconduct noted

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[163] Transcript of Testimony of Karen Haney, July 10, 2015, 34:12 – 15 (GJ_TRANSCRIPT_00004008).

[164] *See* Final Rule: Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,864-66 (Feb. 9, 1995) (noting that entertainment expenses are permissible under FECA and that "the rules do not require an explicit solicitation of contributions or make distinctions based on who participates in the activity.").

[165] Transcript of Testimony of Karen Haney, July 10, 2015, 34:21-25 (GJ_TRANSCRIPT_00004008).

above about Mr. Bass's efforts to influence Ms. Haney's testimony. But that he did so by misleading her on the law in front of the grand jury naturally suggested to the jurors that Ms. Haney was wrong that skiing-related expenses were appropriate if they were incurred in connection with "an annual fundraiser in Colorado that raised money for his leadership PAC," when it was indeed permissible.[166] The effect of Mr. Bass's dismissiveness was to affirmatively mislead the grand jury regarding campaign finance personal use law—one of the key issues in this case.

The same can be said for Mr. Bass's interactions with Ms. Rogers. During a discussion about using campaign funds to pay for concert tickets, Mr. Bass incorrectly implied that such use is illegal: a "concert is not a campaign event. There's no campaigning. There's no speaking by the member. It's a concert, right?"[167] This is incorrect for the same reason that Mr. Bass was wrong about the skiing fundraiser: campaign finance rules permit entertainment expenses such as these and "do not require an explicit solicitation of contributions."[168]

More troubling, Mr. Bass misleadingly suggested to Ms. Rogers that campaign funds could not be used to pay for an automobile used by Dayne LaHood, an official staff member,[169] despite the fact that the House Ethics Manual expressly states: "It is permissible for a Member to lease or purchase a motor vehicle with campaign funds and to use that vehicle on an unlimited basis for travel for *both* campaign *and* official House purposes."[170] And on this issue, there can be no doubt

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[166] *Id.* at 31:19-20.

[167] *See* Transcript of Testimony of Sarah Rogers, June 4, 2015, 125:4 – 126:24 (GJ_TRANSCRIPT_00004305).

[168] *See* Final Rule: Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,866 (Feb. 9, 1995).

[169] *See* Transcript of Testimony of Sarah Rogers, June 4, 2015, 99:22 – 100:5 (GJ_TRANSCRIPT_00004305) (asking her if she could "think of any reason why it would be appropriate for another staff member such as yourself to be provided with a campaign car?").

[170] House Ethics Manual at 174 (emphasis in original).

that the prosecutor's incorrect view of the law likely affected the grand jury, as Count 17 of the Indictment charges Mr. Schock with a 20-year felony for Schock for Congress's reporting of the purchase of cars for use by Mr. LaHood and by Mr. Schock.

Finally, as detailed above in Facts § III, Mr. Bass also misstated the law to Darren and Rebecca Frye when discussing Mr. Schock's occasional stays in their condominium, and to Paul Kilgore when he discussed automobile usage. In each of these instances, Mr. Bass misleadingly implied that lawful conduct was inappropriate or illegal. This entire case revolves around questions about whether particular expenses complied with ambiguous laws. By repeatedly providing the grand jury with his mistaken views of appropriate conduct, Mr. Bass led the jurors to believe that certain transactions were illegal when they were not. This raises grave doubt about whether the grand jury was properly instructed and whether its Indictment was free from Mr. Bass's improper influence.

D. The government's invasive questioning about Mr. Schock's sexual orientation and romantic relationships merits dismissal

The government's inquiries into Mr. Schock's sexuality and romantic relationships were not just distasteful and offensive. They were prejudicial. As discussed *supra* Facts § IV, some of these inquiries occurred directly before the grand jury, thus potentially prejudicing Mr. Schock through salacious innuendo. Others occurred during interviews of witnesses who later testified before the grand jury, thus potentially prejudicing them or shaping their opinions of Mr. Schock.

These inquiries are relevant here because (1) they could have prejudiced the witnesses themselves, and thus affected their testimony; and (2) they reveal the government's malicious intent to impugn Mr. Schock's character. "Evidence of homosexuality is extremely prejudicial" *when offered for no reason except to generate bias against the defendant. United States v. Gillespie*, 852 F.2d 475, 479 (9th Cir. 1988). As one judge has observed, evidence that the

defendant is gay can have "a tremendous negative impact on jurors," and attempts to prejudice a defendant by such evidence "ha[ve] no place in the courtrooms of a civilized society." *Neill v. Gibson*, 263 F.3d 1184, 1199, 1201 (10th Cir. 2001) (Lucero, J., dissenting).

Mr. Schock's sexual orientation and whether or not he slept in the same hotel room with his girlfriend or anyone else is no one's business and is wholly irrelevant to this matter. The government's repeated inquiry into such topics therefore indicates its wrongful intent.

E. The cumulative effect of the prosecutor's misconduct warrants dismissal

Even if the Court concludes that none of these instances of misconduct, standing alone, was sufficient to prejudice Mr. Schock, viewed together they present a picture of a prosecutor who abused the grand jury process and sought to overbear its independence by presenting misleading testimony, harassing and intimidating witnesses, making incorrect statements of the law, and repeatedly inquiring about Mr. Schock's sexual orientation and romantic relationships. The Court may view the prejudice from these violations cumulatively when determining whether to dismiss the indictment. *See Breslin*, 916 F. Supp. at 446.

In addition, "[a] clearly established additional basis for finding prejudice is the weakness of the Government's case." *Aguilar Noriega*, 831 F. Supp. 2d at 1207. For all the sound and fury of the Indictment, the government's case against Mr. Schock is weak. It relies entirely on Mr. Schock's state of mind when navigating a complex and ambiguous web of rules and regulations. There is no allegation of corruption, or that Mr. Schock sold his office; there is no smoking gun and no cash in the freezer. The question of intent is the critical factor in this case, and to the extent the government deliberately misled the grand jury and tainted critical intent witnesses, the Indictment must be dismissed. Without credible evidence that Mr. Schock intentionally set out to defraud the Congress or intentionally mislead the FEC, there should be no indictment in this case.

IV. As an alternative to dismissal, violations of a defendant's Fifth and Sixth Amendment rights warrants suppression of evidence derived from the government's misconduct

Mr. Schock respectfully submits that the government's misconduct, set out above, was so egregious as to raise grave doubt that the grand jury's indictment was free from the prosecution's improper and substantial influence. As such, dismissal is warranted.

In the event the Court, however, determines that dismissal is not the appropriate remedy, the government at a minimum should be deprived of the opportunity to reap the benefits of its misconduct in tainting the minds of key witnesses like Karen Haney and Sarah Rogers. Accordingly, and in the alternative to dismissal, Mr. Schock requests this Court suppress the governments' ability to call Ms. Haney or Ms. Rogers as witnesses in its case-in-chief. Suppression of the potentially-tainted testimony of Ms. Haney and Ms. Rogers would be an appropriate remedy as the government's intentional manipulation of their testimony violated Mr. Schock's Fifth Amendment rights when it effectively deprived him of exculpatory evidence (*i.e.*, the untainted testimony of favorable witnesses) and his Sixth Amendment rights by depriving him of the ability to present a complete defense.

Where the government obtains evidence in violation of a defendant's due process rights, "[s]uppression is an appropriate remedy where the court can identify and isolate" such evidence. *United States v. Marshank*, 777 F. Supp. 1507, 1522 (N.D. Cal. 1991). In suppressing illegally obtained evidence, the "prosecution is thus denied 'the fruits of its transgression' and the due process right to a fair trial is preserved." *Id.* (quoting *United States v. Rogers*, 751 F.2d 1074, 1078 (9th Cir. 1985)).

It is a due process violation for the government to engage in "an unwarranted attempt . . . to bias a witness against a defendant." *Martin v. Allison*, No. 2:11-cv-0870 LKK GGH, 2014 WL 3058442, at *18 (E.D. Cal. July 3, 2014) (observing "if it is a federal crime to corruptly influence

a witness, it would strain credulity to find that nevertheless, it is not a due process violation when undertaken by the prosecution" (internal citations omitted)), *subsequently aff'd*, 671 F. App'x 4479 (9th Cir. 2016). As a commentator has observed,

> Science now tells us that . . .[t]he mind not only distorts and embellishes memories, but a variety of external factors can affect how memories are retrieved and described. [. . .] This finding has troubling implications for criminal trials where witnesses are questioned long and hard by police and prosecutors before the defense gets to do so—if ever. There is thus plenty of opportunity to shape and augment a witness's memory to bring it into line with the prosecutor's theory of what happened.

Hon. Alex Kozinski, *Criminal Law 2.0*, 44 Geo. L.J. Ann. Rev. Crim. Proc. III, vi-vii (2015). Judge Kozinski noted an example where a key witness had confessed after a trial "that her memory may have been distorted by the prosecutor's crafty questioning." *Id.* at vii. That is a distinct possibility here. Thus, the prejudice Mr. Schock stands to suffer from the government's misconduct extends beyond the grand jury and has irreparably affected the trial itself.

The tainting of a witness's testimony through undue manipulation is also analogous to bad faith destruction of evidence in violation of the Fifth Amendment. The Supreme Court recognized a remedy for such misconduct in *California v. Trombetta*, 467 U.S. 479 (1984) and *Arizona v. Youngblood*, 488 U.S. 51 (1988).[171] In turn, the Seventh Circuit has held that a defendant's Fifth

[171] The remedy for a due process violation recognized in *Youngblood* is analogous to other areas of the law that protect a witness's memory. For instance, "[d]efendants have a due process right not to be subject to unreasonably suggestive identification procedures that create a 'substantial likelihood of irreparable misidentification.'" *United States v. Miller*, 795 F.3d 619, 628 (7th Cir. 2015) (quoting *Neil v. Biggers*, 409 U.S. 188, 198 (1972)). "A pretrial confrontation conducted in a manner which is 'so unnecessarily suggestive and conducive to irreparable mistaken identification' denies an accused due process of law, and a subsequent in-court identification is inadmissible if there is a 'very substantial likelihood of irreparable misidentification.'" *United States ex. rel. Hudson v. Brierton*, 699 F.2d 917, 923 (7th Cir. 1983) (quoting *Stovall v. Denno*, 388 U.S. 293, 301-02 (1967) and *Neil*, 409 U.S. at 198) (internal citation omitted). Courts accordingly guard a witness's memory from prosecutorial suggestion in the context of photo arrays and lineups. *See United States v. Griffin*, 493 F.3d 856, 865 (7th Cir. 2007); *Gregory-Bey v. Hanks*, 332 F.3d 1036, 1044-45 (7th Cir. 2003); *United States v. Curry*, 187 F.3d 762, 768 (7th Cir. 1999).

Amendment due process rights are violated "if (1) the [government] acted in bad faith; (2) the exculpatory value of the evidence was apparent before it was destroyed; and (3) the evidence was of such nature that the [defendant] was unable to obtain comparable evidence by other reasonably available means." *McCarthy v. Pollard*, 656 F.3d 478, 485 (7th Cir. 2011). A defendant demonstrates bad faith by showing "official animus" or a "conscious effort to suppress exculpatory evidence" on the part of the government. *United States v. Bell*, 819 F.3d 310, 317 (7th Cir. 2016), *cert. denied*, 138 S. Ct. 283 (2017). Once a due process violation is established, the decision to suppress the evidence or dismiss the indictment turns on the prejudice to the defendant's right to a fair trial. *See United States v. Bohl*, 25 F.3d 904, 914 (10th Cir. 1994).

These standards have been met here. First, AUSA Bass engaged in "a conscious effort to suppress exculpatory evidence" by knowingly and repeatedly presenting Ms. Haney and Ms. Rogers' with false facts and misstatements of the law following their exculpatory testimony. Second, Ms. Haney's and Ms. Rogers' testimony was self-evidently exculpatory regarding various of the transactions they were asked about. Third, the untainted testimony of two of the key employees who handled most of the transactions at issue in this case is not something that Mr. Schock can obtain because what has been done cannot be undone.

The government's conduct also violates Mr. Schock's right to present a complete defense, providing another basis for suppression. "A fundamental element of due process is the right of the accused to present witnesses in his own defense." *United States v. Johnson*, 437 F.3d 665, 677 (7th Cir. 2006). Yet the right to present a defense can be violated when the government makes a favorable witness unavailable to testify. For instance, the government violates a defendant's right to present a complete defense when it deports a witness that it knows would have been material and favorable to the defense. *See United States v. Leal-Del Carmen*, 697 F.3d 964, 969-72 (9th

Cir. 2012). Intentionally exposing a witness to misleading information that falsely inculpates the defendant effectively accomplishes a similar end: it renders that witness unavailable to testify, at least in an unbiased manner.

There is no question that the conscious influencing of potential testimony is a serious matter. Indeed, the federal obstruction of justice criminal statute provides that "[w]hoever knowingly . . . engages in misleading conduct toward another person, with intent to . . . influence . . . the testimony of any person in an official proceeding . . . shall be fined under this title or imprisoned not more than twenty years, or both." 18 U.S.C. § 1512(b). Courts have recognized that the obstruction statute can be violated where the natural and probable consequences of misleading conduct would be to influence the testimony of a witness. *See United States v. Hull*, 456 F.3d 133, 142 (3d Cir. 2006). For example, liability under this statute may attach "where a defendant approaches a witness and attempts to prompt a false recollection of an event obscured by the passage of time and imperfect perception." *United States v. Kulczyk*, 931 F.2d 542, 547 (9th Cir. 1991). By presenting Ms. Haney and Ms. Rogers with false information about portions of transactions outside of their personal knowledge, Mr. Bass's conduct would be expected to have the natural and probable consequence of tainting those witnesses' opinions of Mr. Schock and thus influencing their subsequent testimony.

Our point here is not to accuse the prosecutors of any crime, but to underscore that the law recognizes that misleading conduct can influence the testimony of witnesses. And as such, what is sauce for the goose must be sauce for the gander. If a defendant would be prohibited under penalty of imprisonment for manipulating a witness's memory with the intent to influence a proceeding, surely it is misconduct for the prosecutor to do so as well.

Accordingly, if the Court determines that dismissal is not warranted in this case, the government should nevertheless be denied the fruits of its misconduct and be prohibited from calling these witnesses as part of its case-in-chief.

CONCLUSION

For the reasons stated above, Aaron J. Schock respectfully requests that the Court enter an order dismissing the Indictment with prejudice. In the alternative, Mr. Schock requests that the Court enter an order barring the government from calling Karen Haney and Sarah Rogers as witnesses in its case-in-chief, while permitting Mr. Schock the option of calling them as witnesses if he presents a defense case.

Dated: August 10, 2018

Respectfully submitted,

/s/ George J. Terwilliger III

George J. Terwilliger III
Robert J. Bittman
Benjamin L. Hatch
Nicholas B. Lewis
McGuireWoods LLP
2001 K Street N.W., Suite 400
Washington, D.C. 20006-1040
Tel: 202.857.2473
Fax: 202.828.2965
Email: gterwilliger@mcguirewoods.com

/s/ Christina M. Egan

Christina M. Egan
McGuireWoods LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601-1818
Tel: 312.750.8644
Fax: 312.698.4502
Email: cegan@mcguirewoods.com

/s/ Jeffrey B. Lang

Jeffrey B. Lang
LANE & WATERMAN LLP
220 N. Main Street, Suite 600
Davenport, Iowa 52801-1987
Tel: 563.333.6647
Fax: 563.324.1616
Email: jlang@L-WLaw.com

Counsel for Aaron J. Schock

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record at their respective email addresses disclosed on the pleadings on this 10th day of August, 2018.

/s/ George J. Terwilliger III

George J. Terwilliger III